

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
ADMINISTRATIVE LAW JUDGE LAUREN ESPOSITO**

McDONALD’S USA, LLC, A JOINT EMPLOYER et al.,

and

**FAST FOOD WORKERS COMMITTEE AND
SERVICE EMPLOYEES INTERNATIONAL UNION,
CTW, CLC, et al.**

**Cases 02-CA-093893, et al.
04-CA-125567, et al.
13-CA-106490, et al.
20-CA-132103, et al.
25-CA-114819, et al.
31-CA-127447, et al.**

**RESPONDENT JO-DAN MADALISSE LTD, LLC’S REPLY BRIEF TO CHARGING
PARTIES’ BRIEF IN OPPOSITION TO PROPOSED SETTLEMENT AGREEMENTS**

I. INTRODUCTION

In its prior filing Jo-Dan MadAlisse established that the proposed Settlement Agreement pertaining to the alleged unfair labor practices at its 3137 N. Broad Street, Philadelphia, Pennsylvania location was reasonable under applicable Board standards and should be approved. Jo-Dan MadAlisse now files this limited reply to the Charging Parties’ Brief in Opposition to Proposed Settlement Agreements. In their Brief, the Charging Parties ignore the Board’s settlement standards established in *Independent Stave*, 287 NLRB 740 (1987), present an argument lacking in merit, and ignore the substantial risk of further litigation. The Charging Parties’ objections lack merit and should be overruled. The proposed settlement agreements should be approved by this Court.¹

¹ Jo-Dan MadAlisse neglected to attach to its Brief certain correspondence regarding settlement negotiations as referred in footnote 1 of its Brief in Support of Settlement. The missing correspondence is attached hereto as Exhibits 1-9.

II. ARGUMENT

A. The Charging Parties Fail to Address Two of the Four *Independent Stave* Factors.

While acknowledging that *Independent Stave* requires a four-factor test, the Charging Parties fail to address two of the four factors in their forty-four (44) page Brief. Rather, the Charging Parties focus on arguing that *UPMC*, 365 NLRB No. 153 (2017), created a new reasonableness standard – which it clearly did not.

The first ignored *Independent Stave* factor is the positions of the parties, and specifically the support of the General Counsel in favor of the settlement agreements. The Board has stated many times – including in *UPMC* – that the General Counsel’s position regarding settlement is to be given considerable weight. *UPMC*, 365 NLRB No. 153, at *7 (2017), quoting *McKenzie-Willamette Medical Center*, 361 NLRB No. 7, at *2 (2014) (“The General Counsel’s opposition ‘is an important consideration weighing against approval.’”); *Goya Foods*, 358 NLRB 345, 346 (2012) (“In addition, we find it appropriate to accord particular weight to the Acting General Counsel’s opposition in this case”); *Clark Distribution Systems*, 333 NLRB 747, 750 (2001) (same); *Frontier Foundries*, 312 NLRB 73, 74 (1993) (same). The Charging Parties do not present any argument, let alone a persuasive one, as to why this Court should ignore the General Counsel’s support of the settlement agreements.

As more fully stated in his Brief, the General Counsel contends the agreements fulfill Agency objectives to deliver complete, immediate relief to the alleged discriminatees, promote industrial peace, serve the public interest and conserve Agency’s resources.² While the Charging

² General Counsel’s Brief in Support of Settlement, at 3-4. (“The complete remedies provided by these settlements are the main reason the General Counsel supports them. The settlements vindicate workers’ Section 7 rights by providing make-whole remedies for workers who, in his view, were unlawfully discriminated against and by requiring that Respondents, including McDonald’s if necessary, inform employees of those rights while disavowing their violation. . . . The settlements, in his view, also advance the Act’s policy of promoting prompt resolution of unfair labor practices

Parties appear to have other goals than those advanced by the General Counsel in enforcing the Act, that is no reason to reject the proposed settlements as supported and advanced by the General Counsel.

As to the second ignored *Independent Stave* factor, the Charging Parties do not address nor mention the absence of fraud and duress in their Brief. In fact, nowhere do they address nor acknowledge the full and complete monetary relief, including front pay, accorded the individual discriminates in the settlement agreements.

B. The Charging Parties' Reasonableness Argument Lacks Merit

1. The Charging Parties' Argument is Not Consistent with the General Counsel's Theory of the Case.

Although the Charging Parties argue that McDonald's USA has violated the Act, the General Counsel has not alleged any such allegation in any charge, complaint, or otherwise during the course of this proceeding. The only allegations concerning McDonald's USA are that it possesses an independent joint employer relationship with each charged franchisee.

Under Board law, the General Counsel sets the theory of the case, not the charging party. *Roadway Express*, 355 NLRB 197, 201 n.16 (2010) (holding that "charging party is powerless to enlarge upon or otherwise change" the General Counsel's case theory); *Zurn/N.E. P.C.O.*, 329 NLRB 484, 484 (1999) (same). Although this litigation was consolidated to streamline the presentation of the evidence in support of the joint employer allegation, the underlying complaints continue to treat each franchisee individually and each alleged joint employer relationship

(ULPs) while conserving agency resources. They remedy all outstanding ULP allegations and halt any additional expenditure of limited Agency resources to this matter, thus allowing for their allocation elsewhere.”).

individually and independently. The Charging Parties' desire to revise and/or redirect the General Counsel's theory of the case is without merit.

2. The Charging Parties Fail to Accurately Describe or Assess the Risks Remaining in Litigation.

The Charging Parties unrealistically assume the General Counsel's case is flawless and ignore the many risks of continuing this litigation.³ The Board has cautioned against this logic. *UPMC*, 365 NLRB No. 153, at *3, quoting *Independent Stave* at 742 ("The Board criticized this approach as based on the faulty presumption that 'the General Counsel would prevail on every violation alleged in the complaint.'"). In his reasoned assessment, the General Counsel disagrees with the Charging Parties regarding the risks and uncertainty of the ultimate outcome of this litigation.⁴ The fact that the Charging Parties' assessment differs from that of the General Counsel is not a basis for rejecting the proposed settlement agreements.

³ See *E.g.* Charging Parties' Brief in Opposition to Proposed Settlement Agreements, at 2 ("This solid affirmative record stood largely un rebutted as of November-December 2017").

⁴ General Counsel Brief in Support of Settlement, at 16 ("The General Counsel presumes, however, that McDonald's and these franchisees are equally confident in their defenses. The point is that regardless of the General Counsel's confidence that he would win, the outcome is uncertain.").

III. CONCLUSION

For the foregoing reasons, the proposed settlement agreements are reasonable and effectuate the purposes of the Act, and should be approved by this Court.

Respectfully Submitted

Dated: May 4, 2018

/s/ Joseph A. Hirsch

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Zachary S. Feinberg, Esquire
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CERTIFICATE OF SERVICE

I, Zachary S. Feinberg, hereby certify that on May 4, 2018, a true and correct copy of the foregoing **RESPONDENT JO-DAN MADALISSE LTD, LLC'S REPLY BRIEF TO CHARGING PARTIES' BRIEF IN OPPOSITION TO PROPOSED SETTLEMENT AGREEMENTS** was electronically filed with the Judges Division of the National Labor Relations Board and served on the same date via electronic mail at the following addresses:

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Dated: May 4, 2018

/s/ Zachary S. Feinberg

Counsel for Jo-Dan MadAlisse LTD, LLC

EXHIBIT 1



Zachary Feinberg <feinberg.zack@gmail.com>

Fwd: draft informal settlement agreement prototypes in McDonald's USA, LLC, et al., Case Nos. 02-CA-093893, et al.

1 message

Joseph A. Hirsch - Office <jahirsch@hirschfirm.com>
To: Zachary Feinberg <zfeinberg@hirschfirm.com>

Wed, May 2, 2018 at 1:57 PM

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Begin forwarded message:

From: "Rucker, Jamie" <Jamie.Rucker@nrlb.gov>
Subject: draft informal settlement agreement prototypes in McDonald's USA, LLC, et al., Case Nos. 02-CA-093893, et al.
Date: February 5, 2018 at 3:12:04 PM EST
To: Willis Goldsmith <wgoldsmith@jonesday.com>, Jonathan Linas <jlinas@jonesday.com>, Michael Ferrell <mferrell@JonesDay.com>, Ilana Yoffe <iyoffe@jonesday.com>, "jmartin@jonesday.com" <jmartin@jonesday.com>, "jahirsch@hirschfirm.com" <jahirsch@hirschfirm.com>, Robert Brody <rbrody@brodyandassociates.com>, Lindsay Rinehart <lrinehart@brodyandassociates.com>, Katherine Bogard <kbogard@brodyandassociates.com>, Alexander Friedman <afriedman@brodyandassociates.com>, Micah Wissinger <mwissinger@levyratner.com>, Kathy Krieger <klkrieger@jamhoff.com>
Cc: "Kobell, Deena E." <Deena.Kobell@nrlb.gov>, "Frisch, Jacob" <Jacob.Frisch@nrlb.gov>, "Ortiz, Alejandro" <Alejandro.Ortiz@nrlb.gov>, "Dunham, Geoffrey" <geoffrey.dunham@nrlb.gov>

Counsel:

Attached please find two draft settlements in the McDonald's litigation, the terms of which have been approved by the General Counsel. Please note that (1) while these settlements are restricted to specific franchisees or facility locations, the language in these agreements would be duplicated almost entirely for the other restaurants in the cases which were consolidated back in about March 2015 and (2) in order for settlement to be productive, it must be "global," *i.e.*, it must encompass the 29 facilities named in the consolidated complaint (the allegations against 840 Atlantic were withdrawn), including McDonald's Restaurants of Illinois.

Please note that the backpay figure for Sean Caldwell is subject to change. General Counsel has reviewed Mr. Caldwell's time records, as supplied by Jo-Dan, which indicate that the gross backpay calculations would likely drop by about 30%. However, General Counsel would like to also review the pay records of (1) any maintenance workers employed by Jo-Dan at the Broad and Allegheny store since Mr. Caldwell's firing and (2) any employees at the Broad and Allegheny store who have been employed there for four years or more. Those records are relevant to what wage rates Mr. Caldwell would have been earning if he had continued to be employed by Jo-Dan.

Yours truly,

Jamie Rucker
Counsel for the General Counsel

2 attachments



mcdonalds.settlement.draft.colley.4259 Broadway.Feb.2.pdf
298K



mcdonalds.settlement.draft.JoDan.Feb.2.pdf
404K

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT
APPROVED BY THE ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF

**JO-DAN MADALISSE LTD, LLC D/B/A MCDONALD'S, and
JO-DAN ENTERPRISES, A SINGLE EMPLOYER, and
MCDONALD'S USA, LLC**

**Cases 04-CA-125567,
04-CA-129783 and
04-CA-133621**

Subject to the approval of an Administrative Law Judge of the National Labor Relations Board, the Charged Parties, the Charging Party and Counsel for the General Counsel **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Administrative Law Judge has approved this Agreement, the Regional Office will send copies of the approved Notice to Jo-Dan MadAlisse and Jo-Dan Enterprises (a single employer) (herein “Jo-Dan”) in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of Jo-Dan will then sign and date those Notices and immediately post them at the McDonald’s restaurant at 3137 N. Broad Street, Philadelphia, Pennsylvania in the places where notices to employees are usually maintained. Jo-Dan will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — Jo-Dan will comply with all the terms and provisions of said Notice.

BACKPAY — Within 14 days from approval of this agreement, Jo-Dan will make whole the employee named below by payment to him of the amount opposite his name. Jo-Dan will make appropriate withholdings from that backpay. No withholdings should be made from the Excess Tax and Interest portions of the backpay. Jo-Dan will also file a report with the Regional Director allocating the payment(s) to the appropriate calendar year(s).

<u>Discriminatee</u>	<u>Backpay</u>	<u>Excess Tax</u>	<u>Interest</u>	<u>Total</u>
Sean Caldwell	\$43,922.00	\$1,814.00	\$3,178.00	\$48,914.00

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned cases, contained in GC Exhibit 2(m), paragraphs 1 through 14, and does not settle any other cases or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved, regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of these or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

GUARANTOR – McDonald’s USA, LLC agrees to serve as guarantor of compliance with the remedies in this Agreement. As guarantor, McDonald’s USA, LLC must ensure that Jo-Dan takes all steps necessary to comply with the remedial terms set forth in this Agreement, including providing for any such remedies itself, if Jo-Dan fails to do so.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Administrative Law Judge determines that it will promote the policies of the National Labor Relations Act, the Administrative Law Judge, after providing such party an opportunity to state on the record or in writing its reasons for opposing the Agreement, may approve the settlement agreement. If that occurs, this

Agreement shall be between the Charged Parties and the Counsel for the General Counsel. Any party aggrieved by the ruling of the Administrative Law Judge approving the Agreement may ask for leave to appeal to the Board as provided in Section 102.26 of the Board's Rules and Regulations.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTIES — Counsel for Jo-Dan authorize the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to Jo-Dan. If such authorization is granted, Counsel will be simultaneously served with courtesy copies of these documents.

Yes _____
Initials

No _____
Initials

Jo-Dan MadAlisse LTD, LLC and Jo-Dan
Enterprises, a single employer

PERFORMANCE — Performance by the Charged Parties with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Administrative Law Judge, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Parties of notice that no review has been requested or that the Board has sustained the Administrative Law Judge and the Agreement shall be remanded by the Administrative Law Judge to the Regional Director for securing compliance with its terms.

The Charged Parties agree that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Parties, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Parties, the Regional Director will issue a complaint ("Complaint") if the allegations contained in GC Exhibit 2(m), paragraphs 1 through 14 have been withdrawn. The Complaint would include the allegations in the above-captioned cases, contained in GC Exhibit 2(m), paragraphs 1 through 14, previously issued on December 19, 2014 in the instant case, including allegations as to the filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Complaint. The Charged Parties understand and agree that all of the allegations of the Complaint will be deemed admitted and that they will have withdrawn their answer to the allegations contained in GC Exhibit 2(m), paragraphs 1 through 14, and waive their right to file an Answer to such Complaint. The only issue that may be raised before the Board is whether the Charged Parties defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Parties on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon the Charged Parties at the last addresses provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Parties have taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no request for review has been filed or that the Board has sustained the Administrative Law Judge. Upon notification of compliance with the terms and provisions hereof and the filing of a motion to withdraw the allegations of the Consolidated Complaint contained in GC Exhibit 2(m) paragraphs 1 through 14, against the Charged Parties and no motion in opposition thereto having been granted, the Administrative Law Judge shall issue an order approving the withdrawal of these allegations of the Consolidated Complaint against the Charged Parties, as well as any answers, or portions of answers, filed in response to these allegations.

Contingent upon compliance with the terms and provisions hereof, no further action shall be taken with respect to those allegations of the above-captioned cases.

Charged Party Jo-Dan MadAlisse LLC LTD, d/b/a McDonalds, and Jo-Dan Enterprises, a single employer		Charging Party Pennsylvania Workers Organizing Committee c/o Fight for Philly	
By: Name and Title	Date	By: Name and Title	Date
Charged Party McDonald's USA		General Counsel	
By: Name and Title	Date	By: Name and Title	Date
		Approved By: Lauren Esposito, Administrative Law Judge	Date

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT ask you about employee support for a union.

WE WILL NOT ask you about your complaints and grievances and imply that we will fix them in order to discourage you from supporting a union.

WE WILL NOT tell you that a union cannot help you if it wins an election.

WE WILL NOT promise you benefits in order to discourage you from supporting a union.

You have the right to talk about a union, and **WE WILL NOT** stop you from talking about a union during working time while permitting talk about other nonwork topics during working time.

WE WILL NOT make it appear to you that we are watching out for your union activities.

WE WILL NOT tell you that your support for the Union is costing us money.

WE WILL NOT threaten you with pretend violence because employees support the Union.

WE WILL NOT maintain and enforce an overly broad no-solicitation rule which bans organizational activity in the restaurant.

WE WILL NOT tell Union organizers who are customers in the restaurant that they cannot speak to our off-duty employees in the restaurant.

WE WILL NOT ask off-duty employees not to sit with Union organizers who are restaurant customers.

WE WILL NOT maintain a “no loitering” rule for employees that limits restaurant visits to ten minutes.

WE WILL NOT post “no solicitation” signs in our restaurant in order to discourage you from supporting the Union.

WE WILL NOT disparately enforce our “no solicitation” policy in order to ban employees from talking with Union organizers who are restaurant customers.

WE WILL NOT fire employees because of their union membership or support.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL revise our no solicitation and no loitering rules to make it clear that employees are free to engage in organizing activities protected by Section 7 of the Act, as set forth above.

WE WILL offer Sean Caldwell immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and/or privileges previously enjoyed.

WE WILL pay Sean Caldwell for the wages and other benefits he lost because we fired him.

WE WILL remove from our files all references to the discharge of Sean Caldwell and **WE WILL** notify him in writing that this has been done and that the discharge will not be used against him in any way.

**JO-DAN MADALISSE LTD, D/B/A MCDONALDS
and JO-DAN ENTERPRISES, A SINGLE
EMPLOYER**

(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

Telephone:
Hours of Operation:

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

Report of Backpay Paid Under the National Labor Relations Act

(See IRS Publication 957: Reporting Back Pay and Special Wage Payments to the Social Security Administration)

Employer Name and Address	Jo-Dan Madalisse and Jo-Dan Enterprises (a single employer) 3137 N. Broad Street, Philadelphia, PA 19132					
Employer's EIN:		Tax Year in Which Award Payment Was Paid:				2018
(1) SSN and Employee Name	(2)*Award Amount and Period(s)	(3)**Other Soc. Sec./ Med. Wages Paid in Award Year		(4)***Allocation		
		Soc. Sec.	Med./MQGE	Year	Soc. Sec.	Med./MQGE

*Exclude amounts specifically designated as damages, penalties, etc.
**Exclude the amount of backpay, if any, included in that amount.
***For periods before January, 1978 (and for state and local government (Section 218) employees before January 1, 1981), show the wage amounts by calendar quarters. The social security and/or Medicare Qualified Government Employment (MQGE) wages (where applicable) must be shown separately FOR ALL YEARS. (Wages subject ONLY to MQGE would be shown in the Medicare/MQGE column; no wages would be shown in the Soc. Sec. column.) For tax years 1991 and later, the social security and Medicare wages must be listed separately.

I certify that the payments set forth above were made pursuant to the National Labor Relations Act.

(Sign Name)

(Date)

Contact Person (for questions or additional information):

(Name of Contact)

(Contact Telephone Number)

Send Form to: National Labor Relations Board, **Region 02**
 Attn: Compliance Officer **RACHEL K. KURTZLEBEN**
 26 Federal Plz Ste 3614
 New York, NY 10278-3699

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT
APPROVED BY AN ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF

**BRUCE C. LIMITED PARTNERSHIP, and
MCDONALD'S USA, LLC**

Cases 02-CA-106094

Subject to the approval of an Administrative Law Judge of the National Labor Relations Board, the Charged Parties, the Charging Party and Counsel for the General Counsel **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Administrative Law Judge has approved this Agreement, the Regional Office will send copies of the approved Notice to Bruce C. Limited Partnership in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of Bruce C. Limited Partnership will then sign and date those Notices and immediately post them at the McDonald's restaurant at 4259 Broadway, New York, New York in the places where notices to employees are usually maintained. Bruce C. Limited Partnership will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — Bruce C. Limited Partnership will comply with all the terms and provisions of said Notice. Additionally, McDonald's USA, LLC agrees that it will not cause Bruce C. Limited Partnership to change the way its employee schedule is communicated to employees in order to discourage employees from participating in a union or to inhibit union activity by limiting employees' knowledge of their co-workers' schedules.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned cases, contained in GC Exhibit 1(eee), paragraphs 1(w-y) and 85 through 93, and does not settle any other cases or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved, regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of these or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

GUARANTOR — McDonald's USA, LLC agrees to serve as guarantor of compliance with the remedies in this Agreement. As guarantor, McDonald's USA, LLC must ensure that Bruce C. Limited Partnership take all steps necessary to comply with the remedial terms set forth in this Agreement, including providing for any such remedies itself, if Bruce C. Limited Partnership fail to do so.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Administrative Law Judge determines that it will promote the policies of the National Labor Relations Act, the Administrative Law Judge, after providing such party an opportunity to state on the record or in writing its reasons for opposing the Agreement, may approve the settlement agreement. If that occurs, this Agreement shall be between the Charged Parties and the Counsel for the General Counsel. Any party aggrieved by the ruling of the Administrative Law Judge approving the Agreement may ask for leave to appeal to the Board as provided in Section 102.26 of the Board's Rules and Regulations.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTIES — Counsel for Bruce C. Limited Partnership authorize the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed

settlement, original notices and a certification of posting directly to Bruce C. Limited Partnership. If such authorization is granted, Counsel will be simultaneously served with courtesy copies of these documents.

Yes _____
Initials

No _____
Initials

Bruce C. Limited Partnership

PERFORMANCE — Performance by the Charged Parties with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Administrative Law Judge, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Parties of notice that no review has been requested or that the Board has sustained the Administrative Law Judge and the Agreement shall be remanded by the Administrative Law Judge to the Regional Director for securing compliance with its terms.

The Charged Parties agree that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Parties, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Parties, the Regional Director will issue a complaint ("Complaint") if the allegations contained in GC Exhibit 1(eee), paragraphs 1(w-y), 2, 3 and 85 through 93, have been withdrawn. The Complaint would include the allegations in the above-captioned cases, contained in GC Exhibit 1(eee), paragraphs 1(w-y), 2, 3, and 85 through 93, previously issued on December 19, 2014 in the instant case, including allegations as to the filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Complaint. The Charged Parties understand and agree that all of the allegations of the Complaint will be deemed admitted and that they will have withdrawn their answer to the allegations contained in GC Exhibit 1(eee), paragraphs 1(w-y), 2, 3 and 85 through 93, and waive their right to file an Answer to such Complaint. The only issue that may be raised before the Board is whether the Charged Parties defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Parties on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon the Charged Parties at the last addresses provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Parties have taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no request for review has been filed or that the Board has sustained the Administrative Law Judge. Upon notification of compliance with the terms and provisions hereof and the filing of a motion to withdraw the allegations of the Consolidated Complaint contained in GC Exhibit 1(eee), paragraphs 1(w-y) and 85 through 93, against the Charged Parties and no motion in opposition thereto having been granted, the Administrative Law Judge shall issue an order approving the withdrawal of these allegations of the Consolidated Complaint against the Charged Parties, as well as any answers, or portions of answers, filed in response to these allegations. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken with respect to those allegations of the above-captioned cases.

Charged Party Bruce C. Limited Partnership	Charging Party Fast Food Workers' Committee
---	--

By: Name and Title	Date	By: Name and Title	Date
Charged Party McDonald's USA		General Counsel	
By: Name and Title	Date	By: Name and Title	Date
		Approved By: Lauren Esposito, Administrative Law Judge	Date

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT threaten to close the restaurant if employees choose to join a union.

WE WILL NOT threaten to reduce employees' work hours if they choose to join a union.

WE WILL NOT tell you that you cannot accept literature from union representatives.

WE WILL NOT change the way the schedule is communicated to employees in order to discourage employees from participating in a union or to inhibit union activity by limiting employees' knowledge of their co-workers' schedules.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL post the weekly employee schedule in an area viewable to all employees.

BRUCE C. LIMITED PARTNERSHIP

(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB

(1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

Telephone:

Hours of Operation:

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

EXHIBIT 2



Zachary Feinberg <feinberg.zack@gmail.com>

Re: Jo-Dan settlement

1 message

Joseph A. Hirsch - Office <jahirsch@hirschfirm.com>

Fri, Feb 16, 2018 at 2:52 PM

To: "Rucker, Jamie" <Jamie.Rucker@nlrb.gov>

Cc: "Kobell, Deena E." <Deena.Kobell@nlrb.gov>, "Ortiz, Alejandro" <Alejandro.Ortiz@nlrb.gov>, "Frisch, Jacob" <Jacob.Frisch@nlrb.gov>, "Dunham, Geoffrey" <geoffrey.dunham@nlrb.gov>, Zachary Feinberg <zfeinberg@hirschfirm.com>

Dear Mr. Rucker,

Please see the attached correspondence and related documentation.

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza
3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

On Feb 12, 2018, at 3:47 PM, Rucker, Jamie <Jamie.Rucker@nlrb.gov> wrote:

Thank you for your response.

From: Joseph A. Hirsch - Office [<mailto:jahirsch@hirschfirm.com>]**Sent:** Monday, February 12, 2018 3:43 PM**To:** Rucker, Jamie <Jamie.Rucker@nlrb.gov>**Cc:** Kobell, Deena E. <Deena.Kobell@nlrb.gov>; Ortiz, Alejandro <Alejandro.Ortiz@nlrb.gov>; Frisch, Jacob <Jacob.Frisch@nlrb.gov>; Dunham, Geoffrey <geoffrey.dunham@nlrb.gov>**Subject:** Re: Jo-Dan settlement

Dear Mr. Rucker,

I am in the process of gathering payroll records for maintenance workers from 4/1/2014 to the present and also payroll records for crew during the same period who worked for longer periods of time. My client had sent me records last week in a format I was unable to open. I expect to forward the same to you shortly along with my full response to your email of 2/5/2018 and my markup of your draft agreement.

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza
3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004

tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

On Feb 12, 2018, at 3:06 PM, Rucker, Jamie <Jamie.Rucker@nlrb.gov> wrote:

Dear Mr. Hirsch:

Please advise me whether you will be sending me the documents I requested last week and, if so, when. I would like to be able to send you a revised draft settlement agreement, but I cannot do so absent a response from your client.

Thank you for your attention to this matter.

Yours truly,

Jamie Rucker
Counsel for the General Counsel

From: Rucker, Jamie
Sent: Monday, February 05, 2018 4:03 PM
To: 'jahirsch@hirschfirm.com' <jahirsch@hirschfirm.com>
Cc: Kobell, Deena E. <Deena.Kobell@nlrb.gov>; Ortiz, Alejandro <Alejandro.Ortiz@nlrb.gov>; Frisch, Jacob <Jacob.Frisch@nlrb.gov>; Dunham, Geoffrey <geoffrey.dunham@nlrb.gov>
Subject: Jo-Dan settlement

Dear Mr. Hirsch:

Ms. Kobell has forwarded me your message from Saturday evening, February 3, 2018. In that message, you write, "[N]ow that the General Counsel's *Browning Ferris* joint employer case is no longer viable, what remains is a garden variety 8(a)(1) and (3) case." Whether due to misunderstanding or some other reason, that assertion misstates the posture of this case.

As noted in the Charging Parties' Opposition to General Counsel's Motion to Stay Proceedings, pp. 2–3 (Jan. 18, 2018) and various media outlets, the General Counsel's theory of the case, as well as the complaints, answers, subpoenas, and various decisions by the Administrative Law Judge, all antedated the decision in *Browning-Ferris Industries of California*, 362 NLRB NO. 186 (Aug. 27, 2015). In other words, the joint employer aspect of this case was brought under the law that was reaffirmed by *Hy-Brand Industrial Contractors*, 365 NLRB No. 156 (Dec. 14, 2017). Thus, that latter decision does not undermine the viability of the joint employer allegations in this matter.

For that reason, any settlement in this matter must include McDonald's USA, LLC, must come to grips with the joint employer allegations in this case, and cannot treat this litigation like "a garden variety 8(a)(1) and (3) case." Further, settlement can only achieve the stated aims of McDonald's USA, LLC and the General Counsel of conserving resources if it encompasses all the cases in this matter, *i.e.*, the Region 2 and 4 cases and those in Regions 13, 20, 25, and 31.

Turning to the backpay issues for Mr. Caldwell, while I agree that the time punch record you entered into evidence suggests that Mr. Caldwell worked an average of 21 hours per week rather than 30, I would like to check that other records are consistent with that evidence, particularly in light of your client's demonstrated difficulties with maintaining accurate records. And while I am glad you have agreed to produce payroll records for maintenance workers covering the time from Mr. Caldwell's firing to the present to help determine what wage rates and raises Mr. Caldwell might have received had he not been unlawfully fired, I note you did not agree to produce the other pay records requested, *viz.*, those for persons who worked for Jo-Dan for a long period (relative to fast food employment generally). Those records are also relevant to attempting to determine what wages Mr. Caldwell would have received had he continued to be employed by your client for the backpay period.

As to your remarks about mitigation, it is well-established that "an employer does not meet its burden of showing an inadequate job search by presenting evidence of lack of employee success in obtaining interim employment or of low interim earnings. *Food & Commercial Workers Local 1357*, 301 NLRB 617, 621 (1991)." *Lorge School*, 355 NLRB 558, 560 (2010). Further, given that Mr. Caldwell was, as Jo-Dan was aware, an ex-convict, it is far from surprising that obtaining interim employment would prove difficult for Mr. Caldwell.

Finally, given (1) Mr. Caldwell's difficulty in finding other employment and (2) the fact that settlement will involve Jo-Dan offering Mr. Caldwell re-instatement under his previous terms and conditions of employment, which in his case would involve a schedule that accommodates his status as a student, I anticipate that Mr. Caldwell would want to return to work. If Jo-Dan wants Mr. Caldwell to waive that right, it will have to negotiate the terms of such waiver with Charging Party counsel. (In light of Memorandum GC 18-02, which rescinded, *inter alia*, Memorandum GC 13-02, General Counsel cannot include such pay in lieu of reinstatement in a Board settlement.) I have been advised that Mr. Wissinger will be the contact person for such purposes.

I look forward to receiving the pay records I have requested. Once I have had a chance to review them, I will propose a new backpay figure for Mr. Caldwell.

Yours truly,

Jamie Rucker
Counsel for the General Counsel

3 attachments



JR-2-16-2018.pdf
2664K



JoDan MadAlisse Payroll Run - maintenance and long term crew.pdf
61K



Employee Start and End Dates.pdf
25K

HIRSCH & HIRSCH

ATTORNEYS AT LAW

TWO BALA PLAZA
3RD FLOOR, SUITE 300
BALA CYNWYD, PENNSYLVANIA 19004

TEL (610) 645-9222
FAX (610) 645-9223
www.hirschfirm.com
jahirsch@hirschfirm.com

JOSEPH A. HIRSCH

February 16, 2018

VIA EMAIL

Jamie Rucker
National Labor Relations Board, Region 2
26 Federal Plaza, Suite 3614
New York, New York 10278-3699

Re: McDonald's USA, LLC, et al., Case Nos. 02-CA-093893, et al.

Dear Mr. Rucker,

This will acknowledge receipt of your email dated 2/5/2018. I had intended to send my markup of your draft settlement agreement at this time, but in view of the apparent overarching issues still being negotiated between the General Counsel and McDonald's, I will reserve my comments until such time as there is an agreement on key language relating to the extent of McDonald's USA, LLC's guaranty, if any.¹

With regard to your comments on Mr. Caldwell's time punch records, I have no idea on what basis you contend that they are not accurate, and suggest that there is no basis for any such contention. Indeed Mr. Caldwell testified under oath that he had no reason to doubt the accuracy of the time punch records. (Tr. at 16485:13-16). The time punches are thus the only reliable record of the actual hours worked, and should form the basis for any back pay calculation. If you still contend otherwise, please identify the objective evidence upon which you are relying in your effort to impeach the time punch records.

I am submitting herewith payroll records for maintenance workers from 4/1/2014 to the present and also payroll records for crew during the same period who worked for longer periods of time as requested, to assist you in determining what, if any, raises Mr. Caldwell might have received. Also attached is a separate document detailing each such employee's dates of employment and position held. I renew my request that the General Counsel engage in the same level of diligence in ascertaining what, if any, mitigation efforts were made by Mr. Caldwell, and what back pay he would be entitled to receive. NLRB policies and procedures require such diligence, and a windfall recovery for Mr. Caldwell is neither justified under the Act, nor a policy goal of the General Counsel.²

¹ In your email to me you correctly noted that the general counsel's joint employer claim predated the decision in *Browning-Ferris*. I would clarify that my comments to Ms. Kobell as to the absence of a viable case on the joint employer issue referred to the lack of sufficient evidence presented at trial under the direct and immediate control standard. Based on some of the correspondence between you and Mr. Goldsmith from last week, I trust you somehow contend otherwise.

² See e.g. NLRB Case Handling Manual, Part 1, Section 10054 ("... It is also important to obtain information concerning search for work and interim earnings. ... this information ... should be documented in a file memo. ...").

Contrary to your assertion, my client was unaware that Mr. Caldwell had a criminal record. It does not run criminal background checks on job applicants, and was unaware until receipt of your email last week that he apparently has a federal felony conviction for possession of cocaine with intent to deliver and a number of state law misdemeanor convictions. Your contention that Mr. Caldwell's criminal history has precluded him from finding employment is both speculative and not realistic in Philadelphia.³ Since 2011, the City of Philadelphia has had legislation (amended in March 2016) which prohibits any questions about criminal records in the job application process. Since 2016 the ordinance has further prohibited employers from considering criminal convictions that occurred more than 7 years before the job application (Phila. Code Ch. 9-3500, et seq.). All of Mr. Caldwell's convictions (both the federal felony and the state law misdemeanors) were more than 7 years old by the time of his termination by Jo-Dan MadAlisse. As a result, his criminal history is not a bar or impediment to employment in Philadelphia where he still resides. It is also well documented in the local media that some employers in Philadelphia, such as Jeffrey Brown of Shoprite, make an affirmative effort to hire those with criminal records.⁴ In fact, there is a Brown's Shoprite about a mile away from where Mr. Caldwell resides, and it is currently accepting applications for maintenance positions. See https://www.shoprite.com/member_browns/

You mentioned in your email that Mr. Caldwell is a student whose school schedule must be accommodated. This statement directly contradicts the statement of Ms. Kobell to me on Tuesday 1/30/2018 that Mr. Caldwell is no longer a student. If Ms. Kobell is correct, there is no need to accommodate Mr. Caldwell's status as a student as you have suggested. Can you please verify which set of facts is correct? In either event, I note that Mr. Caldwell's status as a student does not lessen his duty to diligently search for a job. This issue may further be rendered moot if my client decides to offer to Mr. Caldwell, and if he were to accept, an offer of compensation in lieu of reinstatement.

Please advise whether your office has explored the nature of Mr. Caldwell's efforts to find employment over the period of nearly three and a half years for which you are seeking back pay. Employment opportunities in the fast food sector are readily available in Philadelphia, especially for those who need to work variable hours, such as students. Has the Region confirmed that he

Alleged discriminatees should be reminded during the interview that, in order to be eligible for back pay, they must make reasonable searches for work on a regular basis and should maintain records of their attempts to find work, including: Dates work was sought, Sources of employment leads, e.g., newspaper, internet, personal referral, etc., Names of company contacted and person(s) with whom contact was made, Positions sought, and Response to contacts").

³ Your contention is further undermined by your contention that Mr. Caldwell was hired by my client despite allegedly knowing of his criminal record.

⁴ <http://www.philly.com/philly/columnists/jane-von-bergen/Why-supermarket-Philly-CEO-likes-hiring-drug-dealers-reentry-prison-Browns-ShopRite.html> ("There's another unlikely attribute that has turned out to be a predictor of success at Brown's ShopRite and Fresh Grocer stores. Drug dealing. 'What we realized is that a lot of the people we hired were in the drug trade,' said Brown, founder and chief executive of Brown's Super Stores Inc. 'We were surprised that some of the people we hired have fairly good business skills.' 'The only way the store's hiring managers know who has been imprisoned is if the employee is one of 250 to 350 people a year who are hired through the city-run reentry program or through community groups, including the Salvation Army and Philabundance. Each has programs for the formerly incarcerated that provide job-readiness training in soft skills...').

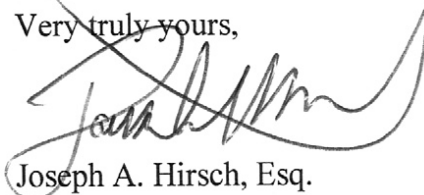
maintained and provided to the Region contemporaneous notes detailing his job search efforts? If Mr. Caldwell was truly unemployed for a period of approximately 3.5 years, has anyone from the Region 2 or 4 inquired how he was able to support himself during that time or if, in fact, there were additional interim earnings (other than the job he held from November 2014 through May 2015)? Further, if you still contend that Mr. Caldwell's criminal history precluded him from finding employment, has either Region 2 or Region 4 verified this through specific information Mr. Caldwell has provided?

Has your office made any inquiry into the circumstances under which Mr. Caldwell left his job making \$11 per hour in or about May 2015? This information clearly impacts Mr. Caldwell's potential entitlement to back pay and should be readily accessible to the General Counsel.⁵

Any failure to consider these issues in earnest would be inconsistent with the NLRB's goal to provide Mr. Caldwell with the appropriate remedy. NLRB Casehandling Manual (Part One) Unfair Labor Practice Proceedings Sec.10128 ("... if the charged party asserts different facts relevant to the appropriateness of particular remedies (e.g., ... the discriminatee's average overtime hours were less than claimed), fairness requires that the Region contact the charging party to fully investigate the factual disputes before reaching conclusions.")

I await your reply as well as your office's updated back pay calculation, and hope to have a meaningful discussion with you regarding appropriate back pay for Mr. Caldwell. If you prefer that I discuss these matters with Ms. Kobell, I remain happy to do so.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Joe Hirsch", written over the typed name "Joseph A. Hirsch, Esq.".

Joseph A. Hirsch, Esq.

JAH/dmj
enclosures

cc: D. Kobell
A. Ortiz
J. Frisch
G. Dunham

⁵ NLRB Casehandling Manual (Part Three) Compliance Proceedings Sec.10506.3 ("The Region is responsible for maintaining contact with discriminatees during the course of unfair labor practice proceedings, for advising them of their responsibilities, and for obtaining information from them that will be needed to determine backpay"); *Knickerbocker Plastic Co.*, 132 NLRB 1209, 1212-15 (1961) ("Once these claimants had obtained jobs, they *could not voluntarily relinquish such employment* under the circumstances herein involved without incurring what constitutes a willful loss of earnings for the period subsequent to their quitting."); *Kslm-Am & Ksd-Fm*, 275 NLRB 1342, 1343-44 (1985) ("[T]he consequences of a claimant's willful decision to reduce and ultimately *terminate suitable interim employment for personal convenience* unrelated to securing other equivalent interim employment or to the nature of the departed interim employment should reasonably be borne by the claimant and not by the Respondent." (internal citations omitted)); *Jackson Hospital Corp.*, 352 NLRB 194, 208 (2008) ("When a discriminatee quits interim employment, the burden shifts to the General Counsel to show that the decision to quit was reasonable").

#F707 Jo-Dan Madalisse LTD LLC

Payroll Register (S109)

Check Date : 04/01/2014-1 TO 02/14/2018-1

Period Range : 03/09/2014 TO 12/23/2018

Week Number : Week #7

Employee Name		Social Security Number				Salary		Frequency		Check Number	Check Date	Check Type	Net Check
Earnings Description	Rate of Pay	Current Hours	Current Amount	YTD Hours	YTD Amount	Deductions Description	Current Amount	YTD Amount		Taxes Description		Current Amount	YTD Amount
Branch: 2957 - Broad & Allegheny													
Department: 70 - B & A Crew													
A, R - 124338 - - 2957/70 PA PA 0.00													
01 Regular	7.50	242.47	1,818.55	242.47	1,818.55					Federal		51.20	51.20
										OASDI		112.75	112.75
										Medicare		26.39	26.39
										State PA		55.83	55.83
										PA-EE SUI		1.26	1.26
										Philadelphia Res.		70.94	70.94
Employee Totals:		242.47	1,818.55	242.47	1,818.55			0.00	0.00			318.37	318.37
A, D - 123850 - - 2957/70 PA PA 0.00													
01 Regular	7.85	1071.80	8,413.61	2893.36	22,497.20	NPNet Pay DD	15,924.29	17,518.50		Federal		1,716.34	1,870.61
01 Regular	7.75	1486.40	11,519.63	2893.36	22,497.20					OASDI		1,282.32	1,409.42
01 Regular	7.65	67.17	513.85	2893.36	22,497.20					Medicare		299.91	329.63
03 Vacation	7.85	30.00	235.50	30.00	235.50					State PA		634.96	697.90
										PA-EE SUI		14.40	15.83
										Philadelphia Res.		810.37	890.81
Employee Totals:		2655.37	20,682.59	2923.36	22,732.70		15,924.29	17,518.50				4,758.30	5,214.20
B, E - 123961 - - 2957/70 PA PA 0.00													
01 Regular	8.00	559.03	4,472.24	851.47	6,636.29	NPNet Pay DD	673.52	673.52		Federal		539.73	539.73
01 Regular	7.40	292.44	2,164.05	851.47	6,636.29					OASDI		411.45	411.45
										Medicare		96.24	96.24
										State PA		203.73	203.73
										PA-EE SUI		4.66	4.66
										Philadelphia Res.		260.22	260.22
Employee Totals:		851.47	6,636.29	851.47	6,636.29		673.52	673.52				1,516.03	1,516.03
B, K - 124237 - - 2957/70 PA PA 0.00													
01 Regular	7.50	406.38	3,047.87	406.38	3,047.87					Federal		243.94	243.94
										OASDI		188.96	188.96
										Medicare		44.19	44.19
										State PA		93.57	93.57

Inova Payroll

phone: 717-390-9000

fax: 717-390-8509

e-mail:

Date Printed: 02/12/2018 4:27:19 PM

#F707 Jo-Dan Madalisse LTD LLC

Payroll Register (S109)

Check Date : 04/01/2014-1 TO 02/14/2018-1

Period Range : 03/09/2014 TO 12/23/2018

Week Number : Week #7

Employee Name						Social Security Number		Salary		Frequency		Check Number	Check Date	Check Type	Net Check
Earnings Description	Rate of Pay	Hours	Current Amount	YTD Hours	YTD Amount	Deductions Description	Current Amount	YTD Amount	Taxes Description	Current Amount	YTD Amount				
									PA-EE SUI	2.13	2.13				
									Philadelphia Res.	119.16	119.16				
Employee Totals:		406.38	3,047.87	406.38	3,047.87	0.00		0.00	691.95		691.95				
B [REDACTED], S [REDACTED] - 123852 - [REDACTED] - 2957/70						PA		PA	0.00						
01 Regular	8.00	1486.34	11,890.72	5518.86	45,137.59	NPNet Pay DD	36,555.48	38,774.29	Federal	484.74	514.23				
01 Regular	8.30	1186.37	9,846.92	5518.86	45,137.59				OASDI	2,692.18	2,855.62				
01 Regular	8.50	792.57	6,736.89	5518.86	45,137.59				Medicare	629.61	667.83				
01 Regular	8.15	1721.09	14,026.90	5518.86	45,137.59				State PA	1,333.04	1,413.97				
02 Overtime	12.00	1.18	14.16	1.18	14.16				PA-EE SUI	30.21	32.04				
03 Vacation	8.15	25.00	203.75	81.00	651.75				Philadelphia Res.	1,697.08	1,800.52				
03 Vacation	8.00	56.00	448.00	81.00	651.75										
09 Paid Sick Le:	8.50	30.00	255.00	30.00	255.00										
Employee Totals:		5298.55	43,422.34	5631.04	46,058.50	36,555.48		38,774.29	6,866.86		7,284.21				
C [REDACTED], A [REDACTED] - 123826 - [REDACTED] - 2957/70						PA		PA	0.00						
01 Regular	8.30	136.37	1,131.87	929.54	7,596.19	NPNet Pay DD	1,707.07	3,818.71	Federal	411.99	647.93				
01 Regular	8.15	455.43	3,711.75	929.54	7,596.19				OASDI	300.30	470.95				
									Medicare	70.23	110.14				
									State PA	148.70	233.20				
									PA-EE SUI	3.39	5.31				
									Philadelphia Res.	190.01	298.02				
Employee Totals:		591.80	4,843.62	929.54	7,596.19	1,707.07		3,818.71	1,124.62		1,765.55				
C [REDACTED], J [REDACTED] - 124118 - [REDACTED] - 2957/70						PA		PA	0.00						
01 Regular	7.30	407.29	2,973.24	407.29	2,973.24				Federal	206.90	206.90				
									OASDI	184.35	184.35				
									Medicare	43.12	43.12				
									State PA	91.27	91.27				
									PA-EE SUI	2.06	2.06				
									Philadelphia Res.	116.42	116.42				
Employee Totals:		407.29	2,973.24	407.29	2,973.24	0.00		0.00	644.12		644.12				
C [REDACTED], T [REDACTED] - 123827 - [REDACTED] - 2957/70						PA		PA	0.00						
01 Regular	7.65	1578.33	12,074.23	5792.32	46,132.14	NPNet Pay DD	32,785.18	34,888.82	Federal	3,682.03	3,912.56				

#F707 Jo-Dan Madalisse LTD LLC

Payroll Register (S109)

Check Date : 04/01/2014-1 TO 02/14/2018-1

Period Range : 03/09/2014 TO 12/23/2018

Week Number : Week #7

Employee Name						Social Security Number		Salary	Frequency		Check Number	Check Date	Check Type	Net Check
Earnings Description	Rate of Pay	Hours	Current Amount	YTD Hours	YTD Amount	Deductions Description	Current Amount	YTD Amount	Taxes Description	Current Amount	YTD Amount			
01 Regular	8.20	1210.15	9,923.25	5792.32	46,132.14				OASDI	2,750.58	2,920.26			
01 Regular	8.45	814.93	6,886.17	5792.32	46,132.14				Medicare	643.25	682.92			
01 Regular	7.95	1825.36	14,511.62	5792.32	46,132.14				State PA	1,362.00	1,446.02			
03 Vacation	8.20	40.00	328.00	70.00	557.50				PA-EE SUI	30.90	32.83			
03 Vacation	7.65	30.00	229.50	70.00	557.50				Philadelphia Res.	1,733.84	1,841.24			
09 Paid Sick Le:	8.45	40.00	338.00	49.00	411.80									
09 Paid Sick Le:	8.20	9.00	73.80	49.00	411.80									
Employee Totals:		5547.77	44,364.57	5911.32	47,101.44			32,785.18 34,888.82			10,202.60		10,835.83	
F [REDACTED], T [REDACTED] - 124278 - [REDACTED] - 2957/70						PA PA	0.00							
01 Regular	7.30	235.60	1,719.89	235.60	1,719.89				Federal	112.04	112.04			
									OASDI	106.63	106.63			
									Medicare	24.94	24.94			
									State PA	52.80	52.80			
									PA-EE SUI	1.20	1.20			
									Philadelphia Res.	67.14	67.14			
Employee Totals:		235.60	1,719.89	235.60	1,719.89			0.00 0.00			364.75		364.75	
G [REDACTED], S [REDACTED] - 123857 - [REDACTED] - 2957/70						PA PA	0.00							
01 Regular	8.10	1638.91	13,275.18	7304.19	60,624.25	NPN Net Pay DD	49,526.99	51,754.66	OASDI	3,615.59	3,777.54			
01 Regular	8.40	1803.41	15,148.63	7304.19	60,624.25				Medicare	845.63	883.50			
01 Regular	8.60	1153.61	9,921.05	7304.19	60,624.25				State PA	1,790.30	1,870.49			
01 Regular	8.25	2383.92	19,667.39	7304.19	60,624.25				PA-EE SUI	40.63	42.46			
02 Overtime	12.90	0.03	0.39	3.93	47.78				Philadelphia Res.	2,278.49	2,380.98			
02 Overtime	12.15	3.90	47.39	3.93	47.78									
03 Vacation	0.00	31.00	255.75	31.00	255.75									
Employee Totals:		7014.78	58,315.78	7339.12	60,927.78			49,526.99 51,754.66			8,570.64		8,954.97	
In [REDACTED], J [REDACTED] - 124086 - [REDACTED] - 2957/70						PA PA	0.00							
01 Regular	7.45	968.00	7,211.61	5114.30	40,000.66				Federal	2,583.83	2,583.83			
01 Regular	7.95	1460.62	11,611.94	5114.30	40,000.66				OASDI	2,487.04	2,487.04			
01 Regular	8.25	904.18	7,459.51	5114.30	40,000.66				Medicare	581.69	581.69			
01 Regular	7.70	1781.50	13,717.60	5114.30	40,000.66				State PA	1,231.53	1,231.53			
02 Overtime	11.93	2.23	26.59	9.74	113.11				PA-EE SUI	27.89	27.89			

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Payroll Register (S109)	
Check Date :	04/01/2014-1 TO 02/14/2018-1
Period Range :	03/09/2014 TO 12/23/2018
Week Number :	Week #7

Employee Name Social Security Number						Salary	Frequency	Check Number	Check Date	Check Type	Net Check
Earnings Description	Rate of Pay	Hours	Current Amount	YTD Hours	YTD Amount	Deductions Description	Current Amount	YTD Amount	Taxes Description	Current Amount	YTD Amount
02 Overtime	11.18	0.58	6.48	9.74	113.11				Philadelphia Res.	1,565.87	1,565.87
02 Overtime	11.55	6.93	80.04	9.74	113.11						
Employee Totals:		5124.04	40,113.77	5124.04	40,113.77		0.00	0.00		8,477.85	8,477.85
J [REDACTED], T [REDACTED] - 123897 - [REDACTED] - 2957/70 PA PA						0.00					
01 Regular	7.25	3617.92	26,230.01	6595.92	48,608.51	NPNet Pay DD	1,206.40	2,098.90	Federal	4,109.60	4,169.33
01 Regular	7.65	1115.83	8,536.10	6595.92	48,608.51				OASDI	2,957.89	3,027.11
01 Regular	7.45	1708.17	12,725.89	6595.92	48,608.51				Medicare	691.77	707.97
02 Overtime	11.48	3.50	40.16	19.42	216.73				State PA	1,464.68	1,498.96
02 Overtime	10.88	4.48	48.73	19.42	216.73				PA-EE SUI	33.23	34.00
02 Overtime	11.18	11.44	127.84	19.42	216.73				Philadelphia Res.	1,863.74	1,907.55
Employee Totals:		6461.34	47,708.73	6615.34	48,825.24		1,206.40	2,098.90		11,120.91	11,344.92
K [REDACTED], W [REDACTED] - 124451 - [REDACTED] - 2957/70 PA PA						0.00					
01 Regular	7.40	1125.31	8,327.29	1125.31	8,327.29				Federal	304.79	304.79
									OASDI	516.29	516.29
									Medicare	120.73	120.73
									State PA	255.64	255.64
									PA-EE SUI	5.69	5.69
									Philadelphia Res.	324.10	324.10
Employee Totals:		1125.31	8,327.29	1125.31	8,327.29		0.00	0.00		1,527.24	1,527.24
R [REDACTED], T [REDACTED] - 124159 - [REDACTED] - 2957/70 PA PA						0.00					
01 Regular	8.60	1036.95	8,917.76	3988.02	33,308.60				Federal	107.73	107.73
01 Regular	8.15	1369.84	11,164.20	3988.02	33,308.60				OASDI	2,107.00	2,107.00
01 Regular	8.40	834.70	7,030.43	3988.02	33,308.60				Medicare	492.76	492.76
01 Regular	8.30	746.53	6,196.21	3988.02	33,308.60				State PA	1,043.33	1,043.33
03 Vacation	8.30	40.00	332.00	40.00	332.00				PA-EE SUI	23.56	23.56
09 Paid Sick Le:	8.60	40.00	344.00	40.00	344.00				Philadelphia Res.	1,325.56	1,325.56
Employee Totals:		4068.02	33,984.60	4068.02	33,984.60		0.00	0.00		5,099.94	5,099.94
S [REDACTED], K [REDACTED] - 124103 - [REDACTED] - 2957/70 PA PA						0.00					
01 Regular	7.45	133.72	996.22	4021.32	29,764.48				Federal	2,399.18	2,399.18
01 Regular	7.40	3887.60	28,768.26	4021.32	29,764.48				OASDI	1,845.41	1,845.41
									Medicare	431.61	431.61

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Payroll Register (S109)

Check Date : 04/01/2014-1 TO 02/14/2018-1

Period Range : 03/09/2014 TO 12/23/2018

Week Number : Week #7

Employee Name						Social Security Number		Salary		Frequency		Check Number	Check Date	Check Type	Net Check
Earnings Description	Rate of Pay	Current Hours	Current Amount	YTD Hours	YTD Amount	Deductions Description	Current Amount	YTD Amount	Taxes Description	Current Amount	YTD Amount				
									State PA	913.80	913.80				
									PA-EE SUI	20.72	20.72				
									Philadelphia Res.	1,162.23	1,162.23				
Employee Totals:		4021.32	29,764.48	4021.32	29,764.48	0.00		0.00	6,772.95		6,772.95				
7 [REDACTED], L [REDACTED] - 124497 - [REDACTED] - 2957/70						PA		PA	0.00						
01 Regular	7.40	734.01	5,431.68	734.01	5,431.68	NPNet Pay DD	1,050.83	1,050.83	Federal	445.40	445.40				
02 Overtime	11.10	1.47	16.32	1.47	16.32				OASDI	337.77	337.77				
									Medicare	78.98	78.98				
									State PA	167.27	167.27				
									PA-EE SUI	3.62	3.62				
									Philadelphia Res.	211.95	211.95				
Employee Totals:		735.48	5,448.00	735.48	5,448.00	1,050.83		1,050.83	1,244.99		1,244.99				
V [REDACTED], J [REDACTED] - 124364 - [REDACTED] - 2957/70						PA		PA	0.00						
01 Regular	7.50	78.40	588.00	78.40	588.00				Federal	19.18	19.18				
									OASDI	36.45	36.45				
									Medicare	8.52	8.52				
									State PA	18.05	18.05				
									PA-EE SUI	0.40	0.40				
									Philadelphia Res.	22.94	22.94				
Employee Totals:		78.40	588.00	78.40	588.00	0.00		0.00	105.54		105.54				
V [REDACTED], Z [REDACTED] - 124036 - [REDACTED] - 2957/70						PA		PA	0.00						
01 Regular	7.45	50.60	376.97	3398.03	24,980.59	NPNet Pay DD	18,732.60	18,732.60	Federal	680.48	680.48				
01 Regular	7.35	3347.43	24,603.62	3398.03	24,980.59				OASDI	1,548.82	1,548.82				
									Medicare	362.21	362.21				
									State PA	766.95	766.95				
									PA-EE SUI	17.48	17.48				
									Philadelphia Res.	976.09	976.09				
Employee Totals:		3398.03	24,980.59	3398.03	24,980.59	18,732.60		18,732.60	4,352.03		4,352.03				
W [REDACTED], E [REDACTED] - 124458 - [REDACTED] - 2957/70						PA		PA	0.00						
01 Regular	7.25	73.04	529.56	73.04	529.56				OASDI	34.63	34.63				
08 Other	7.25	4.00	29.00	4.00	29.00				Medicare	8.10	8.10				

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Payroll Register (S109)

Check Date : 04/01/2014-1 TO 02/14/2018-1

Period Range : 03/09/2014 TO 12/23/2018

Week Number : Week #7

Employee Name						Social Security Number		Salary		Frequency		Check Number	Check Date	Check Type	Net Check	
Earnings Description	Rate of Pay	Hours	Current Amount	YTD Hours	YTD Amount	Deductions Description	Current Amount	YTD Amount	Taxes Description	Current Amount	YTD Amount					
									State PA	17.15	17.15					
									PA-EE SUI	0.39	0.39					
									Philadelphia Res.	21.75	21.75					
Employee Totals:		77.04	558.56	77.04	558.56	0.00		0.00	82.02		82.02					
W [REDACTED], J [REDACTED] - 124290 - [REDACTED] - 2957/70 PA PA						0.00										
01 Regular						7.50	344.92	2,586.92	344.92	2,586.92			Federal	221.00	221.00	
									OASDI	160.38	160.38					
									Medicare	37.50	37.50					
									State PA	79.41	79.41					
									PA-EE SUI	1.81	1.81					
									Philadelphia Res.	100.96	100.96					
Employee Totals:		344.92	2,586.92	344.92	2,586.92	0.00		0.00	601.06		601.06					
W [REDACTED], M [REDACTED] - 123974 - [REDACTED] - 2957/70 PA PA						0.00										
01 Regular						7.50	47.86	358.96	2165.99	15,715.47			Federal	1,065.77	1,065.77	
01 Regular						7.25	2118.13	15,356.51	2165.99	15,715.47			OASDI	974.33	974.33	
									Medicare	227.85	227.85					
									State PA	482.44	482.44					
									PA-EE SUI	10.98	10.98					
									Philadelphia Res.	615.06	615.06					
Employee Totals:		2165.99	15,715.47	2165.99	15,715.47	0.00		0.00	3,376.43		3,376.43					
W [REDACTED], O [REDACTED] - 124354 - [REDACTED] - 2957/70 PA PA						0.00										
01 Regular						7.50	702.40	5,268.05	702.40	5,268.05			Federal	85.50	85.50	
08 Other						7.50	3.00	22.50	3.00	22.50			OASDI	328.02	328.02	
									Medicare	76.71	76.71					
									State PA	162.41	162.41					
									PA-EE SUI	3.71	3.71					
									Philadelphia Res.	206.35	206.35					
Employee Totals:		705.40	5,290.55	705.40	5,290.55	0.00		0.00	862.70		862.70					
70 - B & A Crew						946 Checks		22 EMPLOYEES								
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

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Employee Initials (Last, First)	Start Date	End Date	Maintenance Employee?
A, R	8/29/16	11/15/16	yes
A, D	5/11/12	12/14/15	yes
B, E	4/21/14	2/19/15	yes
B, K	2/22/16	7/26/16	yes
B, S	2/14/08	present	no
C, A	5/14/12	2/8/15	yes
C, J	4/8/15	2/11/16	yes
C, T	10/18/13	present	no
F, T	5/3/16	11/27/16	yes
G, S	5/15/12	present	no
In, J	3/2/15	present	yes
J, T	9/21/13	present	no
K, W	4/18/17	present	yes
R, T	7/31/15	present	no
S, K	3/16/15	present	yes
T, L	8/28/17	present	yes
V, J	10/27/16	12/7/16	yes
V, Z	9/30/14	9/29/17	no
W, B	4/29/17	8/29/17	yes
W, J	5/27/16	8/27/16	yes
W, M	5/26/14	4/15/17	no
W, O	10/3/16	5/19/17	yes

EXHIBIT 3



Zachary Feinberg <feinberg.zack@gmail.com>

Fwd: back-pay calculations in connection with the discharge of Sean Caldwell

Joseph A. Hirsch <jahirsch1@gmail.com>

Fri, Feb 23, 2018 at 3:55 PM

To: Zachary Feinberg <zfeinberg@hirschfirm.com>, Lou Rosner <lrosner@verizon.net>

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
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jahirsch1@gmail.com
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Begin forwarded message:

From: "Rucker, Jamie" <Jamie.Rucker@nrb.gov>**Subject:** back-pay calculations in connection with the discharge of Sean Caldwell**Date:** February 23, 2018 at 2:52:40 PM EST**To:** "Joseph A. Hirsch - Office" <jahirsch@hirschfirm.com>**Cc:** "Dunham, Geoffrey" <geoffrey.dunham@nrb.gov>, "Kobell, Deena E." <Deena.Kobell@nrb.gov>, "Ortiz, Alejandro" <Alejandro.Ortiz@nrb.gov>, "Frisch, Jacob" <Jacob.Frisch@nrb.gov>

Dear Mr. Hirsch:

Please see the attached letter.

Yours truly,

Jamie Rucker
Counsel for the General Counsel

**LTR.to.Hirsch.re.Caldwell.backpay.23.Feb.2018.pdf**
97K



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NATIONAL LABOR RELATIONS BOARD

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www.nlrb.gov
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February 23, 2018

Via Electronic Mail [jahirsch@hirschfirm.com]

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza, Third Floor
Suite 300
Bala Cynwyd, PA 19004

Re: McDonald's USA, LLC, et al.
Case Nos. 02-CA-093893, et al.

Dear Mr. Hirsch:

I write to (i) clarify the General Counsel's position regarding the back-pay amounts to which Mr. Caldwell would be entitled as part of any resolution of the complaint currently pending against Jo-Dan Madalisse and Jo-Dan Enterprises, as a single employer ("Jo-Dan") and (ii) correct some apparent misunderstandings embodied in your letter of last Friday, February 23, 2018.

Starting with my "comments on Mr. Caldwell's time punch records," I note that I did not contend that they were not accurate, but that they might well not be. That concern was based on the evidence adduced at trial from Jo-Dan's own witnesses that both (i) certain disciplinary forms had been maintained in Sean Caldwell's personnel file and (ii) those same forms were not in Sean Caldwell's personnel file. Since of course both statements could not be true and those documents were the linchpin of Jo-Dan's alleged reasons for firing Mr. Caldwell, I had good reason to be skeptical of the accuracy of other Jo-Dan records relating to Mr. Caldwell. Further, as you should be aware, Mr. Caldwell's honest testimony that he didn't have a reason to doubt the accuracy of Jo-Dan's time records, given his lack of knowledge about how such records were produced, maintained, or verified, does very little to establish their accuracy. I therefore took the reasonable step of determining whether those time records were consistent with other available documentary evidence, as I said I would in my February 5th message to you. Having done that, I agree that the available evidence indicates that Mr. Caldwell worked an average of twenty-one (21) hours per week in the year preceding his discharge rather than thirty (30).

Second, while the pay summaries you sent me were not the payroll records I requested, I note that those summaries are consistent with and support the conclusion that maintenance people employed by Jo-Dan have received raises of roughly equal amounts each year, though the

amount varies from employee to employee.¹ General Counsel's back-pay calculations for Mr. Caldwell therefore assume that the fifty cents per hour (\$0.50/hr.) raise he received after less than a year would have been an annual event.

Third, turning to the issue of Mr. Caldwell's criminal record, I am skeptical of your claim regarding Jo-Dan's knowledge thereof, given that (i) Mr. Caldwell was hired through a program, Philly Renew, which was designed to place ex-convicts in employment and (ii) the Jo-Dan manager who hired Mr. Caldwell, Clarence Moore, specifically asked Mr. Caldwell for the subject of his conviction. But whatever the state of Jo-Dan's knowledge on this subject may have been, the important point, as should have been obvious, was that a criminal record makes it harder to obtain employment² and that, as a consequence, Mr. Caldwell's failure to obtain interim employment is not reliable evidence of any failure on his part to search for work.

Fourth, my statement regarding the need to accommodate Mr. Caldwell's status as a student is not contradicted by Ms. Kobell's claim that he is not currently enrolled. The fact that Mr. Caldwell is not taking classes this semester is due to his inability to continue to afford the tuition, which is, at least in part, a consequence of his unlawful discharge by Jo-Dan.

I now turn to the General Counsel's bases for its back-pay calculations. First, Mr. Caldwell has provided General Counsel with information sufficient to establish that he made reasonable efforts to find employment after being fired by Jo-Dan. Among other things, Mr. Caldwell used the services of Pennsylvania CareerLink, the state government office designed to help place Pennsylvanians looking for work, which required Mr. Caldwell to maintain regular contact with an individual placement counselor. Mr. Caldwell also spent a substantial portion of each week visiting specific neighborhoods and knocking on doors to the end of finding unadvertised openings. Eventually, in about November 2014, Mr. Caldwell was able to obtain employment, which continued until May 2015, when he lost that job due to a disabling injury he received while attempting to supplement his earnings. That injury required surgery in early June 2015, after which Mr. Caldwell was engaged in rehabilitative therapy. According to a medical assessment form dated July 24, 2015, it would be "at least three month" before Mr. Caldwell

¹ *E.g.*, A.D. received two raises of ten cents per hour each over the course of nearly two years; B.E. received a sixty cent per hour raise during his or her tenure of less than a year; B.S. received raises of fifteen, fifteen, and twenty cents per hour in the close to four years of employment covered by the summary, and In.J. received raises of twenty-five, twenty-five, and thirty cents per hour over the same period.

² Regarding your assertion that Mr. Caldwell's "criminal history is not a bar or impediment to employment in Philadelphia," apparently based on the existence of legislation prohibiting asking job applicants about convictions or considering convictions older than seven (7) years, I note only (1) your conclusion is contrary to available evidence, *e.g.*, Harry J. Holzer, Steven Raphael & Michael A. Stoll, *Employment Barriers Facing Ex-Offenders*, n.5 at 11 (Urban Institute Reentry Roundtable Discussion Paper, 2003) ("Over 90% of employers surveyed are willing to consider filling their most recent job vacancy with a welfare recipient, while only about 40% are willing to consider doing so with an ex-offender") and (2) the form of your argument would entail that African-Americans and women do not face discrimination in employment because the Civil Rights Act has been in existence for more than five decades.

would be able to return to work. Unfortunately, that estimate proved optimistic, and in fact Mr. Caldwell underwent a second surgery in connection with his injury in late August of 2016. At a follow-up visit in mid-October 2016, the attending physician stated that Mr. Caldwell would need to be out of work for another three months. In fact, when Mr. Caldwell testified in late April 2017 he was still wearing a brace as a result of the injury and subsequent surgeries.

“When an interim disability is closely related to the nature of the interim employment or arises from the unlawful discharge and is not a usual incident of the hazards of living generally, the period of disability will not be excluded from backpay.” *American Mfg. Co. of Texas*, 167 NLRB 520, 522 (1967). Based on that principle and the above-listed facts, it is apparent that Mr. Caldwell’s back-pay period should extend to (at least) May of 2017. I have therefore revised the back-pay calculations to stop at that point.

Taking all of the foregoing factors—Mr. Caldwell’s average hours of work, his expected wage rates, and the date his eligibility for back-pay could be tolled—into account, Mr. Caldwell is entitled to back-pay, expenses, and interest equaling at least \$28393 (= \$25388 net back-pay + \$728 expenses + \$2277 interest), plus an excess tax liability of \$709. Please note that this calculation slightly understates Jo-Dan’s liability, since it only calculates the interest due to today.

The foregoing should address all of the questions and concerns you raised in your letter of last week. Please feel free to contact me if you have any further questions.

Yours truly,

/s/ Jamie Rucker

Jamie Rucker
Counsel for the General Counsel

EXHIBIT 4



Zachary Feinberg <feinberg.zack@gmail.com>

Fwd: back-pay calculations in connection with the discharge of Sean Caldwell

Joseph A. Hirsch - Office <jahirsch@hirschfirm.com>

Sun, Mar 4, 2018 at 1:48 PM

To: "Rucker, Jamie" <Jamie.Rucker@nlrb.gov>

Cc: "Dunham, Geoffrey" <geoffrey.dunham@nlrb.gov>, "Kobell, Deena E." <Deena.Kobell@nlrb.gov>, "Ortiz, Alejandro" <Alejandro.Ortiz@nlrb.gov>, "Frisch, Jacob" <Jacob.Frisch@nlrb.gov>, Zachary Feinberg <zfeinberg@hirschfirm.com>

Dear Mr. Rucker,

Please see the attached correspondence.

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza
3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

On Feb 23, 2018, at 2:52 PM, Rucker, Jamie <Jamie.Rucker@nlrb.gov> wrote:

Dear Mr. Hirsch:

Please see the attached letter.

Yours truly,

Jamie Rucker
Counsel for the General Counsel
<LTR.to.Hirsch.re.Caldwell.backpay.23.Feb.2018.pdf>

2 attachments**JR-3-4-2018.pdf**
1916K**GC's Draft Notice - JoDan - edits 3-4-2018-JAH - markup.pdf**
146K

HIRSCH & HIRSCH

ATTORNEYS AT LAW

TWO BALA PLAZA
3RD FLOOR, SUITE 300
BALA CYNWYD, PENNSYLVANIA 19004

TEL (610) 645-9222
FAX (610) 645-9223
www.hirschfirm.com
jahirsch@hirschfirm.com

JOSEPH A. HIRSCH

March 4, 2018

VIA EMAIL

Jamie Rucker
National Labor Relations Board, Region 2
26 Federal Plaza, Suite 3614
New York, New York 10278-3699

Re: McDonald's USA, LLC, et al., Case Nos. 02-CA-093893, et al.

Dear Mr. Rucker:

This will acknowledge receipt of your letter dated February 22, 2018.

I am pleased that you were able to verify that Mr. Caldwell's time punch records were consistent with other available documentary evidence, and that it is now your position that the evidence indicates that Mr. Caldwell worked an average of twenty-one (21) hours per week in the year preceding his discharge rather than thirty (30) hours per week. It is also helpful that the demand you have made appears to better take into account appropriate setoffs and mitigation efforts. I believe this will give us a solid basis to reach an agreement on back pay for Mr. Caldwell. To that end, it would be most helpful to see your detailed calculations for the proposed back pay figure so that I can understand how it was derived and explain it to my client.

In anticipation of receiving your detailed calculations, my comments in response to your back pay proposal are as follows:

1. As the excel spreadsheet I sent to Ms. Kobell clearly demonstrated, Mr. Caldwell's average hours worked per week for the last year of his employment were 20.64 hours per week, I think it would be appropriate at this point to work with the actual average rather than rounding up the hours unless you can identify some statutory or agency policy basis to support such rounding up.
2. I do not understand the basis for your determination that a raise of \$0.50 per year is supported by the evidence. Kindly explain how this figure was calculated. No employees received wage increases of \$0.50 over multiple years. I would suggest that a raise of \$0.50 after the first year would be followed by a smaller raise of \$0.25 per year thereafter.
3. We will not contest the position that Mr. Caldwell made a reasonable search for employment during the period between his discharge by my client and his commencement of the replacement job at \$11.00 in November 2014.¹

¹ Contrary to your assertion, my client did not hire Mr. Caldwell through Philly Renew. He was hired by my client when it acquired the Broad and Allegheny McDonald's Restaurant. Also, the study you cited by Harry J. Holzer, Steven Raphael & Michael A. Stoll, Employment Barriers

4. Your description of the circumstance that led to the loss of Mr. Caldwell's interim employment is vague and raises material questions about that event in relation to his interim employment and continued eligibility for back pay. What exactly was Mr. Caldwell doing when he lost his replacement job in May 2015 while attempting to "supplement his earnings?" Was he injured on the job? Was there a workers compensation claim? Did he receive workers compensation benefits? Have those benefits (if any) been set off against the back pay claim?
5. Likewise, since it appears Mr. Caldwell did not sustain his injury in the course of his replacement job (which appears to have more than offset his Jo-Dan MadAlisse earnings), but instead while apparently engaged in an independent pursuit to "supplement his earnings," it would appear that his injury was not "closely related to the nature of the interim employment," did not arise from the alleged unlawful discharge, and was more likely akin to "a usual incident of the hazards of living generally." Thus *American Mfg. Co. of Texas*, 167 NLRB 520, 522 (1967) and its progeny do not support the extension of Mr. Caldwell's back pay period during his lengthy period of apparent disability and non-participation in the labor market. It is Mr. Caldwell who bore the risk of his injury during the pursuit of some voluntary activity beyond his interim employment. If you believe there is a connection I am missing, please explain.
6. On the issue of reinstatement, if Mr. Caldwell is not a student at this time, please explain what student schedule must be accommodated. While I indicated previously that my client may consider engaging in a discussion with the alleged discriminate regarding waiver of reinstatement, this information is nevertheless necessary to understand and evaluate the alternate options as there is no guarantee that such discussions will result in an agreement.
7. Please explain what happened in May of 2017 vis a vis Mr. Caldwell's claim for back pay.
8. Finally, would you please identify the \$728 in expenses you are claiming?

With regard to the proposed settlement agreement and notice, I have attached my markup of the notice, and would be happy to discuss my comments with you at your convenience.

I am not sending back a markup of the settlement agreement since I have not seen the latest version that you are working on with McDonald's. The following comments should be beyond the scope of your discussions with McDonald's:

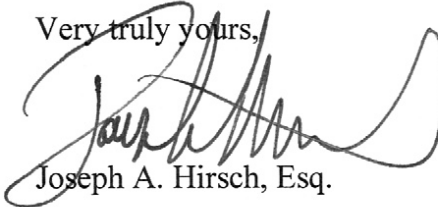
1. While the Judge granted your motion for leave to amend the complaint to join Jo-Dan Enterprises under a single employer theory, the GC never issued, filed or served an Amended Complaint on Jo-Dan Enterprises as required under Board Rules (or as required under the Due Process clause). Jo-Dan Enterprises has thus never been joined as a party to these proceedings. Perhaps more importantly, since Jo-Dan Enterprises is not needed to provide relief in this case (we are proposing up-front payment of all back pay), the single employer issue is not germane to this settlement, and Jo-Dan Enterprises should be removed from the agreement.

Facing Ex-Offenders, n.5 at 11 (Urban Institute Reentry Roundtable Discussion Paper, 2003) was not specific to the Philadelphia marketplace where Mr. Caldwell was living, and its findings do not take into account more recent developments.

2. As you may recall, Paragraphs 4(b) and 6 of the Complaint (regarding Tiona Edwards) were withdrawn at trial. *See* Tr. 16371 at 7:12. Accordingly, the references in the agreement to those paragraphs should be revised (See e.g. "Scope of Agreement" and "Performance" sections). The references should state "paragraphs 1 through 4(a), 5, and 7 through 14."

I look forward to working with you further to reach a resolution of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph A. Hirsch", with a large, sweeping flourish extending to the right.

Joseph A. Hirsch, Esq.

cc: D. Kobell
A. Ortiz
J. Frisch
G. Dunham

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT ask you about employee support for a union.

WE WILL NOT ask you about your complaints and grievances and imply that we will fix them in order to discourage you from supporting a union.

WE WILL NOT tell you that a union cannot help you if it wins an election.

WE WILL NOT promise you benefits in order to discourage you from supporting a union.

You have the right to talk about a union, and **WE WILL NOT** stop you from talking about a union during working time in non-customer / non-selling areas of the restaurant while permitting talk about other non-work topics during working time.

WE WILL NOT make it appear to you that we are watching out for your union activities.

WE WILL NOT tell you that your support for the Union is costing us money.

WE WILL NOT threaten you with pretend violence because employees support the Union.

WE WILL NOT maintain and enforce an overly broad no-solicitation rule which discriminatorily bans organizational activity in the non-customer / non-selling areas of the restaurant.

WE WILL NOT tell Union organizers who are customers in the restaurant that they cannot speak to our off-duty employees in the restaurant in a manner consistent with our non-discriminatory no-solicitation rule.

WE WILL NOT ask off-duty employees not to sit with Union organizers who are restaurant customers.

WE WILL NOT maintain a "no loitering" rule for employees that limits restaurant visits to ten minutes.

WE WILL NOT post "no solicitation" signs in our restaurant in order to discourage you from supporting the Union.

WE WILL NOT disparately enforce our "no solicitation" policy in order to ban employees from talking with Union organizers who are restaurant customers.

WE WILL NOT fire employees because of their union membership or support.

Deleted: WE WILL NOT do anything to prevent you from exercising the above rights.

Commented [JH1]: See comment below.

Commented [JH2]: See *Chipotle Serv. LLC*, 364 NLRB No. 72, at *1 fn 3 (Aug. 18, 2016); *May Dep't Stores Co.*, 59 NLRB 976, 981 (1944) ("reasonable ground for prohibiting union solicitation at all times on the selling floor"); *Meier & Frank Co.*, 89 NLRB 1016, 1017 (1950) (department store may prohibit union solicitation on its selling floors at all times); *Honda of Mineola*, 218 NLRB 486, 486 n.3 (1975) ("broad proscription of union activity within the selling areas of ... [a retailer's] premises is not unlawful"); *The Times Publ'g Co.*, 240 NLRB 1158, 1159 (1979) ("The Board has consistently found such an exception [regarding solicitation and distribution] to exist in cases involving retail establishments"); *J.C. Penny Co.*, 266 NLRB 1223, 1224 (1983) ("It is equally well settled that in the case of retail establishments an employer may prohibit solicitation in the selling areas of a retail store even when employees are on their own time.").

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL revise our no solicitation and no loitering rules to make it clear that employees are free to engage in organizing activities protected by Section 7 of the Act, as set forth above.

WE WILL offer Sean Caldwell immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and/or privileges previously **enjoyed**.

WE WILL pay Sean Caldwell for the wages and other benefits he lost because we fired him.

WE WILL remove from our files all references to the discharge of Sean Caldwell and **WE WILL** notify him in writing that this has been done and that the discharge will not be used against him in any way.

Commented [JH3]: We are considering the possibility of discussing with the discriminatee compensation in lieu of reinstatement., and if that is accepted, this language would have to change to reflect the same.

**JO-DAN MADALISSE LTD, D/B/A
MCDONALDS**

(Employer)

Deleted: and JO-DAN ENTERPRISES, A
SINGLE

Deleted: EMPLOYER
<object>

Dated: _____ **By:** _____
(Representative) (Title)

Deleted: --

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1- 866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866- 315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

Telephone:
Hours of Operation:

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

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Right

Report of Backpay Paid Under the National Labor Relations Act

(See IRS Publication 957: Reporting Back Pay and Special Wage Payments to the Social Security Administration)

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Employer Name and Address	Jo-Dan Madalisse LTD. LLC 3137 N. Broad Street, Philadelphia, PA 19132					
Employer's EIN:		Tax Year in Which Award Payment Was Paid:				2018
(1) SSN and Employee Name	(2)*Award Amount and Period(s)	(3)**Other Soc. Sec./ Med. Wages Paid in Award Year		(4)***Allocation		
		Soc. Sec.	Med./MQGE	Year	Soc. Sec.	Med./MQGE
<small>*Exclude amounts specifically designated as damages, penalties, etc. **Exclude the amount of backpay, if any, included in that amount. ***For periods before January, 1978 (and for state and local government (Section 218) employees before January 1, 1981), show the wage amounts by calendar quarters. The social security and/or Medicare Qualified Government Employment (MQGE) wages (where applicable) must be shown separately FOR ALL YEARS. (Wages subject ONLY to MQGE would be shown in the Medicare/MQGE column; no wages would be shown in the Soc. Sec. column.) For tax years 1991 and later, the social security and Medicare wages must be listed separately.</small>						

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I certify that the payments set forth above were made pursuant to the National Labor Relations Act.

(Sign Name)

(Date)

Contact Person (for questions or additional information):

(Name of Contact)

(Contact Telephone Number)

Send Form to: National Labor Relations Board, Region 02
Attn: Compliance Officer RACHEL K. KURTZLEBEN
26 Federal Plz Ste 3614
New York, NY 10278-3699

EXHIBIT 5



Zachary Feinberg <feinberg.zack@gmail.com>

Fwd: potential settlement

Joseph Hirsch <jahirsch@hirschfirm.com>

Tue, Mar 6, 2018 at 3:09 PM

To: Zachary Feinberg <zfeinberg@hirschfirm.com>, Irosner@verizon.net

Sent from my iPhone

Begin forwarded message:

From: "Rucker, Jamie" <Jamie.Rucker@nlrb.gov>**Date:** March 6, 2018 at 2:46:44 PM EST**To:** "jahirsch@hirschfirm.com" <jahirsch@hirschfirm.com>**Cc:** "Kobell, Deena E." <Deena.Kobell@nlrb.gov>, "Ortiz, Alejandro" <Alejandro.Ortiz@nlrb.gov>, "Frisch, Jacob" <Jacob.Frisch@nlrb.gov>, "Dunham, Geoffrey" <geoffrey.dunham@nlrb.gov>**Subject:** potential settlement

Dear Mr. Hirsch:

Please see the attached letter.

Yours truly,

Jamie Rucker

Counsel for the General Counsel

**LTR.to.Hirsch.re.Caldwell.backpay.6.March.2018.pdf**

104K



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 2
26 Federal Plaza, Suite 3614
New York, NY 10278-3699

Agency Website:
www.nlr.gov
Telephone: (212) 264-0300
Fax: (212) 264-2450

March 6, 2018

Via Electronic Mail [jahirsch@hirschfirm.com]

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza, Third Floor
Suite 300
Bala Cynwyd, PA 19004

Re: McDonald's USA, LLC, et al.
Case Nos. 02-CA-093893, et al.

Dear Mr. Hirsch:

I write in response to your letter dated yesterday, Sunday, March 4, 2018. I address the assertions therein in the order they were raised.

1. Accepting the period of the year preceding his unlawful discharge and rounding up by one-third of an hour is generous to your client. If you wish to press the point, General Counsel is prepared to recalculate Mr. Caldwell's average weekly hours of work using the actual hours worked by him from the beginning of his employment with Jo-Dan Enterprises and Jo-Dan Madalisse, as a single employer. (Even restricting averaging to the period after John Dawkins IV gave his daughter a controlling interest in the facility, *i.e.*, August 1, 2013, the evidence is that Mr. Caldwell worked more than 21 hours per week in many of the weeks currently excluded from consideration. *E.g.*, for the period September 8 through 21, 2013, Mr. Caldwell worked more than 28.25 hours per week; in the succeeding pay period, he worked over 25 hours per week; in the period ending November 2, 2013, he worked 26.3 hours a week; in the period after that, Mr. Caldwell earned more than 26 hours per week.) In short, General Counsel is not willing to further "round down" Mr. Caldwell's average weekly hours below the already generous estimate allowed.
2. As explained in my previous letter, the summaries you provided in lieu of records showed that maintenance employees received raises approximately once a year in roughly equal amounts each time. The fact that Mr. Caldwell's initial raise was larger than what other employees received does not negate that conclusion but merely suggests he was worth more as an employee than other maintenance workers for Jo-Dan. In light of that fact, your failure to provide any justification for your estimate of the raises Mr.

Caldwell would have received had he not been unlawfully fired, and the well-established remedial principle requiring wrongdoers to bear the risk of uncertainty, General Counsel rejects your proposed estimate.

3. Given (1) your agreement not to contest that Mr. Caldwell has sufficiently established he made reasonable efforts to find work and (2) the advantage that accrues to Jo-Dan by virtue of Mr. Caldwell's employment from November 2014 into the following May, there is no dispute that the gross backpay period extends at least that far, *i.e.*, into May 2015.
4. Mr. Caldwell did not make a workers' compensation claim—and therefore did not collect workers' compensation benefits—because he was injured pursuing self-employment.
5. You read *American Mfg. Co. of Texas*¹ too narrowly. While it is true that the job Mr. Caldwell began in November 2014 paid better than his work for Jo-Dan before he was unlawfully fired, that fact does not make that later job the only possible “interim employment” for all purposes. First, due to the part-time nature of both jobs, Mr. Caldwell could easily have maintained both his employment with Jo-Dan and the work he began in November 2014. Thus, the activities Mr. Caldwell undertook to supplement the income he derived from his more recent work would not have been possible or necessary but for his unlawful firing by Jo-Dan. Put another way, if Jo-Dan had not unlawfully fired Mr. Caldwell, he could have supplemented his income by taking the job he did in November 2014. Thus, that job is reasonably construed as providing supplemental income and the self-employment Mr. Caldwell undertook in May 2015 as the interim employment which replaced Mr. Caldwell's work for Jo-Dan.² Thus, the injury Mr. Caldwell suffered in May 2015, which caused the loss of the second job and the subsequent inability to work until May 2017, is certainly more closely related to interim employment than to the ordinary hazards of life generally. That conclusion is further strengthened by the fact that Jo-Dan's decision to contest Mr. Caldwell's unemployment benefits—and its use of fraudulent documents in support of its case—led directly to Pennsylvania's decision to deny Mr. Caldwell those benefits. That denial meant Mr. Caldwell was without any income for nearly eight months, *i.e.*, Mr. Caldwell had to catch up on past-due bills and the like. Thus, Mr. Caldwell's need to supplement his income was also directly attributable to Jo-Dan's decision to fire him for his union activities, making his injury again more closely related to Jo-Dan's decision to fire him than to ordinary living. In short, the self-employment activities Mr. Caldwell undertook are directly attributable to Jo-Dan's unlawful conduct.

¹ 167 NLRB 520 (1967).

² Because dollars are fungible, the Board simply treats any income stream that arises in connection with working as interim earnings. Thus, if one job provides enough earnings to offset the loss suffered as a result of an unlawful firing, that is all the “interim employment” one needs to consider for that purpose. The employee will still receive the benefits of whatever additional earnings s/he makes through other employment, including self-employment. Identifying which job replaced which is irrelevant to those purposes.

6. Your request for the precise schedule Mr. Caldwell will have when he is able to return to school is, as you should know, unanswerable. When Jo-Dan reinstates Mr. Caldwell, General Counsel expects that Jo-Dan will, as it has done in the past, adjust Mr. Caldwell's work schedule to accommodate his class schedule if he is able to return to school. Failure to do so would constitute a breach of the expected settlement, which will require reinstatement under the terms and conditions of work Mr. Caldwell had before being fired.
7. May 2017 simply marks the point at which there is, to General Counsel's knowledge, no further evidentiary support for the conclusion that Mr. Caldwell continued to be disabled and hence unable to work. As noted in my previous letter, documented opinions by different doctors, along with the dates Mr. Caldwell underwent surgeries and periods where he was demonstrably still healing, carry the period of his disability through April 2017. General Counsel made the conservative decision to stop the period of Mr. Caldwell's disability there.

I also note that the General Counsel's calculation of Mr. Caldwell's backpay well was done when he had not yet renewed his search for work. As of February 8, 2018, Mr. Caldwell had resumed those efforts, meaning that the backpay period had also re-started. If you wish to press this point, General Counsel will revise its calculation to reflect the resumption of Jo-Dan's backpay obligation on or about February 8, 2018 and continuing to date.

8. The \$728 in expenses General Counsel has claimed for Mr. Caldwell should be \$687. \$637 of that represents \$91 per month for the months April through October 2014 for monthly mass transit passes Mr. Caldwell purchased in connection with his search for work. Mr. Caldwell also incurred (i) \$2 in copying costs to make copies of resumes in connection with his search for work and (ii) \$48 to purchase two pairs of Dickies work pants for the job he began in November 2014, thereby constituting expenses of his interim employment.
9. You misunderstand or misconstrue what occurred vis-à-vis the complaint allegations. I moved to amend the complaint to allege that Jo-Dan Enterprises and Jo-Dan Madalisse were joint employers. (Tr. 17190:21–17191:1.) The judge granted that motion. (Tr. 18378:7–11.) Nothing more needs to be done.³ Your claim that the process somehow failed to conform to the requirements of the Board's Rules and Regulations is incorrect. (I note that you fail to cite any provision of those rules in support of that claim, suggesting you are aware of its emptiness. Your reference to the Due Process clause of the Constitution is equally unsupported and baseless.) Indeed, you appear to be aware of the state of the complaint and the allegations it encompasses, since you took testimony from Danielle Dawkins which was apparently intended to support your position that Jo-Dan Madalisse and Jo-Dan Enterprises did not compose a single employer under the Act. (E.g., Tr. 19977:16–19979:2, 20011:7–20, 20143:5–20144:2.) Your claim that Jo-Dan

³ Your attempt to re-characterize the General Counsel's motion as a request "for leave to amend" lacks any support or basis in the record.

Enterprises has not been joined to this proceeding is also meritless. *E.g., Il Progreso Italo Americano Publishing Co.*, 299 NLRB 270, 270 n.4 (1990) (service of one entity composing single employer serves as notice to other entities found to constitute such single employer); *G.W. Truck*, 240 NLRB 333, 333 n.2 and 334–335 (1979) (same).

Despite Ms. Dawkins’ testimony, the evidence establishes that the two Jo-Dan entities composed a single employer under the Act. General Counsel’s position is that any settlement should reflect that fact, both for the benefit of employees and for purposes of securing compliance with the eventual settlement terms, including the prospective injunctive relief encompassed by the posting language. Notwithstanding those desiderata, General Counsel is prepared to agree to remove references to Jo-Dan Enterprises from the Agreement if you and your clients accept the backpay figure calculated by General Counsel for Mr. Caldwell.⁴

10. I agree that references to paragraphs 4(b) and 6 may be removed from the settlement agreement language. With one minor exception, however, I reject the proposed changes to the notice language. First, the general promise you propose deleting has been a standard part of settlement agreements concluded by the General Counsel since 2011 and serves to reassure employees of the breadth of both (i) their Section 7 rights and (ii) their employer’s obligation to allow full exercise of those rights. If you are concerned with the potential for conduct in violation of that clause to constitute a breach of the settlement, however, General Counsel hereby affirms that the Regional Director assigned the responsibility of investigating any alleged breach of the settlement will not find a violation of that settlement based on conduct that contravenes this broad prohibition and does not also conflict with some other provision of the notice.

Your first proposed change to the promise in the notice beginning “You have the right to talk...” is rejected. Wherever employees are permitted to talk about other topics beyond the immediate requirements of the job, they have the right to talk about union activity. General Counsel is willing, however, to accept your proposal to add the adjective “non-work” to that provision.

Your proposed changes regarding the overly broad no-solicitation rule are rejected. Whether that rule was also discriminatorily applied is irrelevant to its status as unlawfully overbroad. Further, General Counsel does not share your interpretation of the case law regarding where a fast-food restaurant may permissibly restrict employee solicitation and similar Section 7 activity.

Your proposed addition to the promise not to prohibit Union organizers from speaking to off-duty employees in the restaurant is also rejected. The facts do not establish the existence of any lawful rule which could prohibit such activity and it is General

⁴ General Counsel also notes the limited time available before March 19, 2018. I do not expect General Counsel will request any further stay of the proceedings in this matter. Thus, if the Respondents and General Counsel are not prepared to present motions for ALJ approval of executed settlements, I anticipate the ALJ will expect McDonald’s to conclude its case that day.

Counsel's position that an off-duty employee has a Section 7 right to talk to a union organizer as long as that activity does not obstruct the sales counter.

The foregoing should exhaust the issues you raised in your letter of March 4, 2018. Please let me know if you have any further questions in connection with the potential conclusion of a settlement agreement in this matter.

Yours truly,

/s/ Jamie Rucker

Jamie Rucker
Counsel for the General Counsel

EXHIBIT 6



Zachary Feinberg <feinberg.zack@gmail.com>

Fwd: potential settlement

1 message

Joseph A. Hirsch - Office <jahirsch@hirschfirm.com>
To: Zachary Feinberg <zfeinberg@hirschfirm.com>

Wed, May 2, 2018 at 1:59 PM

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza
3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

Begin forwarded message:

From: "Joseph A. Hirsch - Office" <jahirsch@hirschfirm.com>
Subject: **Re: potential settlement**
Date: March 8, 2018 at 11:21:19 AM EST
To: "Rucker, Jamie" <Jamie.Rucker@nlrb.gov>
Cc: "Kobell, Deena E." <Deena.Kobell@nlrb.gov>, "Ortiz, Alejandro" <Alejandro.Ortiz@nlrb.gov>, "Frisch, Jacob" <Jacob.Frisch@nlrb.gov>, "Dunham, Geoffrey" <geoffrey.dunham@nlrb.gov>

Dear Mr. Rucker,

Perhaps it would be more productive to have a phone call to attempt to move the ball forward in an effort to reach a resolution. Please let me know if there is a convenient time for us to talk late in the afternoon today or tomorrow.

That said, I have selectively responded to some of the arguments raised in your letter with the caveat that my failure to respond to any particular comment is not to be construed as assent. The numbered paragraphs below correspond to those in your letter.

1. You are accusing me of attempting to round down Mr. Caldwell's work hours, and threatening to include various weeks from 2013 when Mr. Caldwell worked more than 21 hours. I assure you that is not what I have done. In fact, I included the very weeks you cited in your letter in the calculation of averages, and provided those calculations to Ms. Kobell. We calculated separate averages based on the last 3, 6, 9 and 12 months Mr. Caldwell worked. Notwithstanding our differences of opinion on this issue, I suspect we can get beyond it.

5. We clearly disagree on the proper application of *American Mgf. Co. of Texas* and the impact of Mr. Caldwell's injury in the course of attempting to earn supplemental income through self employment over and above his replacement job. This is part of the reason why I believe a phone conversation would be beneficial – not that I think we need to agree upon the proper interpretation of the law for purposes of reaching a resolution.

For purposes of this letter I will note that your comments asserting the alleged use of fraudulent documents are simply inflammatory. Mr. Caldwell's assertion that he had not seen some of the disciplinary records before and suggestion that they were not authentic was rejected by the trier of fact at his unemployment comp. hearing, and that finding was upheld on appeal. I understand that you nonetheless contend that the disciplinary records were fraudulent, and I suspect we need not reach agreement regarding this issue either.

9. Your assertion that nothing more needed to be done by the GC after the judge granted your motion to amend the Complaint is not correct. See NLRB Casehandling Manual (Part One) Compliance Sec. 10274.5 ("As with original complaints, copies of amendments should be served on the parties. Sec. 10268.4. Service at hearings should be personal and should be noted and acknowledged on the record"); *Key Coal Company & United Mine Workers*, 240 N.L.R.B. 1013 (N.L.R.B. 1979) (Board affirmed the ruling of ALJ requiring that the General Counsel serve each party being joined in an amended complaint adding new respondent entities under single employer theory); *NLRB v. H.P. Townsend Mfg. Co.*, 101 F.3d 292, 295-96 (2d Cir. 1996) (court held that a proceeding against a party was "fundamentally defective" where counsel for the General Counsel moved to amend the complaint to add a respondent under an alter ego theory, but failed to serve the new respondent with the amended complaint.. "There was no attempt here even to prepare, much less serve, a pleading that is required to make persons parties to a proceeding in which a judgment or enforceable order may be entered against them [I]f service of a pleading can be replaced by what was done here, . . . chaos would reign." *Id.* at 295. The court held that "the Board violated its own regulations and Section 10(b) of the NLRA. The proceeding as a whole probably violated the due process clause of the Fifth Amendment to the Constitution." *Id.* at 296. The court also stated that while "a party may be found to be an alter ego without re-litigating the underlying unfair labor practices, it is surely not to say that one may be found to be an alter ego without service of a complaint making that charge." *Id.*) [1]; *Northern Montana Health Care Ctr. V. NLRB*, 178 F.3d 1089, 1098 (9th Cir. 1999) (Court refused to enforce the Board's order because the party joined under the single employer theory, was not named in the complaint nor served with a complaint. "Even though the three entities constitute a single employer, and their interests are therefore almost identical, due process is violated when a separate corporate entity has no notice that its interests will be adjudicated and that it will be bound by the order that the NLRB issues").

Your citation to GW Truck is inapposite. That case involved service of a charge, not a complaint, and the Board has found this distinction significant. See *Amateyus, Ltd.*, 280 N.L.R.B. 219, 221 (N.L.R.B. May 30, 1986) ("It has been held . . . where contentions are urged of alter ego status of two corporate entities or joint employers, that failure to serve the original *charge* on one of the corporations is not fatal").

Please let me know if you have any time available to talk after 3:45 p.m. today. I should be back from my hearing by then. Tomorrow I am available after 12:30 p.m.

Very truly yours,

Joe Hirsch

[1] Any argument that service is unnecessary because my firm has acted as counsel for Jo-Dan Enterprises in prior proceedings is insufficient to satisfy the service requirement. See *NLRB v. H.P. Townsend* *5-6, *fn* 2 ("Acting as counsel for other parties does not obviate the need for service of a pleading").

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza
3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

On Mar 6, 2018, at 2:46 PM, Rucker, Jamie <Jamie.Rucker@nlrb.gov> wrote:

Dear Mr. Hirsch:

Please see the attached letter.

Yours truly,

Jamie Rucker

5/3/2018

Gmail - Fwd: potential settlement

Counsel for the General Counsel

<LTR.to.Hirsch.re.Caldwell.backpay.6.March.2018.pdf>

EXHIBIT 7



Zachary Feinberg <feinberg.zack@gmail.com>

Fwd: draft informal settlement of cases involving the Philadelphia franchisee Respondent in the consolidated McDonald's litigation

Joseph A. Hirsch - Office <jahirsch@hirschfirm.com>

Wed, Mar 14, 2018 at 4:12 PM

To: Zachary Feinberg <zfeinberg@hirschfirm.com>

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza
3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

Begin forwarded message:

From: "Rucker, Jamie" <Jamie.Rucker@nlrb.gov>**Subject:** RE: draft informal settlement of cases involving the Philadelphia franchisee Respondent in the consolidated McDonald's litigation**Date:** March 14, 2018 at 3:53:09 PM EDT**To:** "Joseph A. Hirsch - Office" <jahirsch@hirschfirm.com>, Willis Goldsmith <wgoldsmith@jonesday.com>, Ilana Yoffe <iyoffe@jonesday.com>, Micah Wissinger <mwissinger@levyratner.com>, Kathy Krieger <klkrieger@jamhoff.com>**Cc:** "Kobell, Deena E." <Deena.Kobell@nlrb.gov>, "Ortiz, Alejandro" <Alejandro.Ortiz@nlrb.gov>, "Frisch, Jacob" <Jacob.Frisch@nlrb.gov>, "Dunham, Geoffrey" <geoffrey.dunham@nlrb.gov>

SET.04-CA-125567.JoDan.3137.Broad.ISA.14.March.2018.pdf
312K

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT
APPROVED BY THE ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF

**JO-DAN MADALISSE LTD, LLC D/B/A MCDONALD'S, and
JO-DAN ENTERPRISES, A SINGLE EMPLOYER, and
MCDONALD'S USA, LLC**

**Cases 04-CA-125567,
04-CA-129783 and
04-CA-133621**

Subject to the approval of an Administrative Law Judge of the National Labor Relations Board, the Charged Parties, the Charging Party and Counsel for the General Counsel **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING AND MAILING OF NOTICE — After the Administrative Law Judge has approved this Agreement, the Regional Office will send copies of the approved Notice to Jo-Dan MadAlisse and Jo-Dan Enterprises (a single employer) (herein “Jo-Dan”) in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of Jo-Dan will then sign and date those Notices and immediately post them at the McDonald’s brand restaurant at 3137 N. Broad Street, Philadelphia, Pennsylvania in the places where notices to employees are usually maintained. Jo-Dan will keep all Notices posted for 60 consecutive days after the initial posting. To the extent possible, Jo-Dan will also copy and mail, at its own expense, a copy of the attached Notice to the last known address of those former employees who were employed at any time since March 19, 2014 through August 1, 2014. Those Notices will be signed by a responsible official of Jo-Dan and show the date of mailing. Jo-Dan will provide the Regional Director written confirmation of the date of mailing and the names of employees.

COMPLIANCE WITH NOTICE — Jo-Dan will comply with all the terms and provisions of said Notice.

BACKPAY — Within 14 days from approval of this Agreement, Jo-Dan will make whole the employee named below by payment to him of the amount opposite his name. Such payment shall be accomplished by delivery of a certified or cashier’s check(s) at the time of signing to the Regional Director of Region 4, who shall hold such check. After approval of this Agreement by the Administrative Law Judge, the Regional Director shall deliver the certified or cashier’s check(s) to the alleged discriminatee, Sean Caldwell. If the Regional Director is unable to deliver the certified or cashier’s check(s) within one year after approval of this Agreement by the Administrative Law Judge, the Regional Director shall return the certified or cashier’s check(s) to Jo-Dan. Jo-Dan will make appropriate withholdings from the backpay and front pay. No withholdings should be made from the Excess Tax and Interest payments. Jo-Dan will also file a report with the Regional Director allocating the payment(s) to the appropriate calendar year(s).

<u>Discriminatee</u>	<u>Backpay</u>	<u>Excess Tax</u>	<u>Interest</u>	<u>Front Pay</u>	<u>Total</u>
Sean Caldwell	\$26116	\$721	\$2343	\$11820	\$41000

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned cases, contained in GC Exhibit 2(m), paragraphs 1 through 14, and does not settle any other cases or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved, regardless of whether General Counsel knew of those matters or could have easily found them out. Subject to the terms of the Protective Order as applicable in light of the parties’ subsequent stipulations as to the

confidentiality designations of certain documents, General Counsel reserves the right to seek to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of these or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence. Neither this Agreement nor any conduct taken in connection with this Agreement is an admission by the Charged Parties that they are or have ever been joint employers or liable under the Act, and shall not be considered, offered, or admitted as evidence of joint employer status between McDonald's USA, LLC and any of its franchisees.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Administrative Law Judge determines that it will promote the policies of the National Labor Relations Act, the Administrative Law Judge, after providing such party an opportunity to state on the record or in writing its reasons for opposing the Agreement, may approve the Settlement Agreement. If that occurs, this Agreement shall be between the Charged Parties and the Counsel for the General Counsel. Any party aggrieved by the ruling of the Administrative Law Judge approving the Agreement may ask for leave to appeal to the Board as provided in Sections 101.9(d)(2) and 102.26 of the Board's Rules and Regulations.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTIES — Counsel for Jo-Dan authorize the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to Jo-Dan. If such authorization is granted, Counsel will be simultaneously served with courtesy copies of these documents.

Yes _____
Initials

No _____
Initials

Jo-Dan MadAlisse LTD, LLC and Jo-Dan
Enterprises, a single employer

PERFORMANCE — Performance by the Charged Parties with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Administrative Law Judge. The Regional Director shall advise the Charged Parties of any charge alleging non-compliance with this Agreement as soon as practicable after the filing of such charge.

The Charged Parties agree that in case of non-compliance with any of the terms of this Agreement by Jo-Dan, based on alleged activities which take place within nine months after the date of the approval of this Agreement by the Administrative Law Judge, and after 14 days' notice from the Regional Director of the National Labor Relations Board to the Charged Parties of such non-compliance without remedy by Jo-Dan, the Regional Director:

1. May issue a complaint ("Merits Complaint") against Jo-Dan if the allegations contained in GC Exhibit 2(m), paragraphs 1 through 14 have been withdrawn. The Merits Complaint would include the allegations in the above-captioned cases, contained in GC Exhibit 2(m), paragraphs 1, 2(a)–2(c), and 3 through 14, previously issued on December 19, 2014 in the instant case, including allegations as to the filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Such Merits Complaint shall not include allegations that McDonald's USA, LLC is a joint employer with Jo-Dan. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Merits Complaint.
2. Will promptly provide McDonald's USA LLC the approved Special Notices, in the form set forth below, and then provide 14 days to McDonald's USA, LLC to mail the approved Special Notices directly to the last known address of current employees employed by Jo-Dan. Jo-Dan agrees to provide

McDonald's USA, LLC such employees' names and last known addresses as a condition of the Agreement.

3. In the event both Jo-Dan and McDonald's USA, LLC fail to cure the breach of the Agreement, the Regional Director may amend the Merits Complaint identified in paragraph 1 of this section to include McDonald's USA, LLC as a party, and include all the allegations in the above-captioned cases, contained in GC Exhibit 2(m), paragraphs 1 through 14, previously issued on December 19, 2014 in the instant case ("Default Complaint") as well as allegations as to the filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Default Complaint.
4. Notwithstanding any of the above, the Regional Director assigned the responsibility of investigating any alleged breach of this settlement will not allege or find a violation of this settlement based on conduct that contravenes only the broad "We Will Not do anything to prevent you from exercising the above rights" provision of the Notice to be posted by Jo-Dan.

In the event that the General Counsel files a motion for default judgment with the Board on the allegations of the Merits Complaint, the Charged Franchisee understands and agrees that all of the allegations of the Merits Complaint will be deemed admitted and that it will have withdrawn its answer to the allegations contained in GC Exhibit 2(m), paragraphs 1, 2(a)–2(c), and 3 through 14, and waive its right to file an Answer to such Merits Complaint. In the event that the General Counsel files a motion for default judgment with the Board on the allegations of the Default Complaint, the Charged Parties understand and agree that all of the allegations of the Default Complaint will be deemed admitted and that they will have withdrawn their answer to the allegations contained in GC Exhibit 2(m), paragraphs 1 through 14, and waive their right to file an Answer to such Default Complaint. The only issue that may be raised before the Board is whether the Charged Franchisee alone or both of the Charged Parties defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Merits or Default Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Parties on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon the Charged Parties at the last addresses provided to the General Counsel.

SETTLEMENT FUND — Upon execution of this Agreement, McDonald's USA, LLC shall deliver to the National Labor Relations Board ("Board") funds provided by franchisees in the amount of \$250,000, which shall be transferred by the Board into a "Settlement Fund" for the benefit of any and all potential discriminatees who may be entitled to a monetary remedy as a result of an alleged breach of the settlement in this case or any of the other cases which were consolidated as of May 2015. No party to this Agreement shall have any obligation to contribute additional funds to the Settlement Fund after the one-time contribution specified above. All parties to this Agreement and their counsel shall cooperate with the Board to execute any documents reasonably necessary to effectuate the terms of this Agreement.

In the event of:

- (1) a written notice from a Regional Director of a breach of this Settlement by virtue of a violation of Section 8(a)(3) of the Act arising from a Jo-Dan employee's discharge because of his or her union

membership or support during the nine month period following approval of the Agreement by the Administrative Law Judge and

(2) later failure or refusal by Jo-Dan to cure that breach of the Settlement Agreement, this Settlement Fund shall be used to implement McDonald's USA, LLC's support of the remedies provided under this Agreement.

Disbursement from the Settlement Fund to the alleged discriminatee(s) will be triggered when McDonald's USA, LLC notifies the Regional Director that McDonald's USA will issue the approved Special Notice, in the form set forth below, to employees to cure such a breach. Upon such notification, the alleged discriminatee may elect either:

(1) to waive reinstatement and instead receive a disbursement from the Settlement Fund in an amount equal to 500 hours of pay plus backpay for the period from the date of the violation through the date of the written notice of breach from the Regional Director, as calculated by the Regional Director or

(2) to receive a disbursement from the Settlement Fund of the pay s/he would have earned during the period from the date of the violation through the date of the written notice of breach from the Regional Director, as calculated by the Regional Director.

If the alleged discriminatee elects to waive reinstatement and receive disbursement from the Settlement Fund, such disbursement shall be in lieu of any other remedies, the relevant charge allegation(s) will be dismissed, and General Counsel will take no further action on those allegation(s). If the discriminatee elects not to waive reinstatement, the General Counsel may issue a complaint based on the alleged violation(s) of the Act, but shall not pursue default proceedings against McDonald's USA, LLC based on those violation(s).

After 15 months from the approval of the Agreement by the Administrative Law Judge and a determination from the Regional Director that there are no pending charges alleging a breach of the Agreement, the Board shall return to McDonald's USA, LLC, for distribution to the appropriate franchisee, the balance of any unused funds in the Settlement Fund. If there are pending charges after 15 months, the Board shall return the balance of any unused funds in the Settlement Fund after those pending charges are resolved.

NOTIFICATION OF COMPLIANCE — The General Counsel shall, no later than ten days after approval of this Agreement by the Administrative Law Judge, move the Administrative Law Judge for an order approving the withdrawal of the allegations of the Consolidated Complaint against the Charged Parties contained in GC Exhibit 2(m), paragraphs 1 through 14, as well as any answers, or portions of answers, filed in response to these allegations. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken with respect to those allegations of the above-captioned cases. Each party to this Agreement will notify the Regional Director in writing what steps the Charged Parties have taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement by the Administrative Law Judge.

Charged Party Jo-Dan MadAlisse LLC LTD, d/b/a McDonalds, and Jo-Dan Enterprises, a single employer			Charging Party Pennsylvania Workers Organizing Committee c/o Fight for Philly	
By:	Name and Title	Date	By:	Date

Charged Party McDonald's USA, LLC		General Counsel	
By: Name and Title	Date	By: Name and Title	Date
		Approved By: Lauren Esposito, Administrative Law Judge	Date

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- ☐ Form, join, or assist a union;
- ☐ Choose a representative to bargain with us on your behalf;
- ☐ Act together with other employees for your benefit and protection;
- ☐ Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT ask you about employee support for a union.

WE WILL NOT ask you about your complaints and grievances and imply that we will fix them in order to discourage you from supporting a union.

WE WILL NOT tell you that a union cannot help you if it wins an election.

WE WILL NOT promise you benefits in order to discourage you from supporting a union.

You have the right to talk about a union, and **WE WILL NOT** stop you from talking about a union during working time while permitting talk about other nonwork topics during working time.

WE WILL NOT make it appear to you that we are watching out for your union activities.

WE WILL NOT tell you that your support for the Union is costing us money.

WE WILL NOT threaten you with pretend violence because employees support the Union.

WE WILL NOT maintain and enforce an overly broad no-solicitation rule which bans organizational activity in the restaurant.

WE WILL NOT tell Union organizers who are customers in the restaurant that they cannot speak to our off-duty employees in the restaurant.

WE WILL NOT ask off-duty employees not to sit with Union organizers who are restaurant customers.

WE WILL NOT maintain a “no loitering” rule for employees that limits restaurant visits to ten minutes.

WE WILL NOT post “no solicitation” signs in our restaurant in order to discourage you from supporting the Union.

WE WILL NOT disparately enforce our “no solicitation” policy in order to ban employees from talking with Union organizers who are restaurant customers.

WE WILL NOT fire employees because of their union membership or support.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL revise our no solicitation and no loitering rules to make it clear that employees are free to engage in organizing activities protected by Section 7 of the Act, as set forth above.

WE WILL offer Sean Caldwell immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and/or privileges previously enjoyed.

WE WILL pay Sean Caldwell for the wages and other benefits he lost because we fired him.

WE WILL file with the Regional Director for Region 4 a report allocating the backpay award to the appropriate calendar years.

WE WILL remove from our files all references to the discharge of Sean Caldwell and **WE WILL** notify him in writing that this has been done and that the discharge will not be used against him in any way.

**JO-DAN MADALISSE LTD, D/B/A MCDONALDS
and JO-DAN ENTERPRISES, A SINGLE
EMPLOYER**

(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

, **Telephone:**

Hours of Operation:

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

SPECIAL NOTICE TO EMPLOYEES
PROVIDED PURSUANT TO AGREEMENT BETWEEN THE NATIONAL LABOR RELATIONS
BOARD AND MCDONALD'S USA, LLC

A Regional Director of the National Labor Relations Board has investigated an unfair labor practice charge alleging that [insert franchisee name] violated the National Labor Relations Act by [insert action at issue]. The Regional Director has determined that, by that conduct, [insert franchisee name] has violated the National Labor Relations Act and is not in compliance with a settlement agreement. That lack of compliance is the reason for this Notice.

McDonald's USA, LLC is party to the Settlement Agreement between the National Labor Relations Board and [insert franchisee name]. Under the terms of that Settlement Agreement, McDonald's USA, LLC is required to provide this Notice, via U.S.Mail, to support the remedies provided by that Settlement where [insert franchisee name] fails to fulfill its obligations under the Settlement Agreement.

McDonald's USA, LLC is not [insert franchisee name] and McDonald's USA, LLC's representatives did not breach the Settlement. Further, McDonald's USA, LLC's issuance of this Special Notice does not constitute an admission by it of any agency or joint employer status between McDonald's USA, LLC and any of its franchisees. Solely in its role as party to the Settlement Agreement, however, McDonald's USA, LLC disavows that [insert unlawful conduct] and advises you such action is unlawful under the National Labor Relations Act.

FEDERAL LAW GIVES YOU THE RIGHT TO:

- ☐ Form, join, or assist a union;
- ☐ Choose a representative to bargain with us on your behalf;
- ☐ Act together with other employees for your benefit and protection;
- ☐ Choose not to engage in any of these protected activities.

McDonald's USA, LLC

(Franchisor)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1- 866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866- 315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

EXHIBIT 8



Zachary Feinberg <feinberg.zack@gmail.com>

Fwd: draft informal settlement of cases involving the Philadelphia franchisee Respondent in the consolidated McDonald's litigation

Joseph A. Hirsch - Office <jahirsch@hirschfirm.com>

Wed, May 2, 2018 at 2:01 PM

To: Zachary Feinberg <zfeinberg@hirschfirm.com>

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza
3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

Begin forwarded message:

From: "Rucker, Jamie" <Jamie.Rucker@nlrb.gov>

Subject: RE: draft informal settlement of cases involving the Philadelphia franchisee Respondent in the consolidated McDonald's litigation

Date: March 14, 2018 at 4:41:52 PM EDT

To: "Joseph A. Hirsch - Office" <jahirsch@hirschfirm.com>, Willis Goldsmith <wgoldsmith@jonesday.com>, Ilana Yoffe <iyoffe@jonesday.com>, Micah Wissinger <mwissinger@levyratner.com>, Kathy Krieger <klkrieger@jamhoff.com>

Cc: "Kobell, Deena E." <Deena.Kobell@nlrb.gov>, "Ortiz, Alejandro" <Alejandro.Ortiz@nlrb.gov>, "Frisch, Jacob" <Jacob.Frisch@nlrb.gov>, "Dunham, Geoffrey" <geoffrey.dunham@nlrb.gov>

Counsel:

Please excuse me for burdening you with multiple versions of this draft settlement. Respondent franchisee counsel has brought to my attention that the last version of the settlement I sent still (i) referred to complaint paragraphs which had been withdrawn on the record, (ii) named Jo-Dan Enterprises as a Respondent, and (iii) did not account for Mr. Caldwell's anticipated waiver of reinstatement. The current version is intended to address those matters.

Very truly yours,

Jamie Rucker
Counsel for the General Counsel

From: Rucker, Jamie

Sent: Wednesday, March 14, 2018 3:53 PM

To: 'Joseph A. Hirsch - Office' <jahirsch@hirschfirm.com>; Willis Goldsmith <wgoldsmith@jonesday.com>; Ilana Yoffe <iyoffe@jonesday.com>; Micah Wissinger <mwissinger@levyratner.com>; Kathy Krieger <klkrieger@jamhoff.com>

Cc: Kobell, Deena E. <Deena.Kobell@nlrb.gov>; Ortiz, Alejandro <Alejandro.Ortiz@nlrb.gov>; Frisch, Jacob <Jacob.Frisch@nlrb.gov>; Dunham, Geoffrey <geoffrey.dunham@nlrb.gov>

Subject: RE: draft informal settlement of cases involving the Philadelphia franchisee Respondent in the consolidated McDonald's litigation

Counsel:

Please substitute the attached document for the one I sent you earlier this afternoon. The characterization of the \$11820 payment to Mr. Caldwell has been changed from consequential damages to front pay, based on recently acquired information and the sentences regarding withholdings have been amended accordingly. No other changes were made.

Very truly yours,

Jamie Rucker
Counsel for the General Counsel

From: Rucker, Jamie

Sent: Wednesday, March 14, 2018 3:29 PM

To: 'Joseph A. Hirsch - Office' <jahirsch@hirschfirm.com>; Willis Goldsmith <wgoldsmith@jonesday.com>; Ilana Yoffe <iyoffe@jonesday.com>; Micah Wissinger <mwissinger@levyratner.com>; Kathy Krieger <klkrieger@jamhoff.com>

Cc: Kobell, Deena E. <Deena.Kobell@nlrb.gov>; Ortiz, Alejandro <Alejandro.Ortiz@nlrb.gov>; Frisch, Jacob <Jacob.Frisch@nlrb.gov>; Dunham, Geoffrey <geoffrey.dunham@nlrb.gov>

Subject: draft informal settlement of cases involving the Philadelphia franchisee Respondent in the consolidated McDonald's litigation

Counsel:

Attached please find a proposed settlement agreement in the above-referenced matter. Please advise me of your position vis-à-vis this draft agreement.

Very truly yours,

Jamie Rucker
Counsel for the General Counsel



SET.04-CA-125567.JoDan.3137.Broad.ISA.14.March.2018.pdf
311K

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT
APPROVED BY THE ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF

**JO-DAN MADALISSE LTD, LLC D/B/A MCDONALD'S
and MCDONALD'S USA, LLC**

**Cases 04-CA-125567,
04-CA-129783 and
04-CA-133621**

Subject to the approval of an Administrative Law Judge of the National Labor Relations Board, the Charged Parties, the Charging Party and Counsel for the General Counsel **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING AND MAILING OF NOTICE — After the Administrative Law Judge has approved this Agreement, the Regional Office will send copies of the approved Notice to Jo-Dan Madalisse LTD, LLC (herein “Jo-Dan”) in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of Jo-Dan will then sign and date those Notices and immediately post them at the McDonald’s brand restaurant at 3137 N. Broad Street, Philadelphia, Pennsylvania in the places where notices to employees are usually maintained. Jo-Dan will keep all Notices posted for 60 consecutive days after the initial posting. To the extent possible, Jo-Dan will also copy and mail, at its own expense, a copy of the attached Notice to the last known address of those former employees who were employed at any time since March 19, 2014 through August 1, 2014. Those Notices will be signed by a responsible official of Jo-Dan and show the date of mailing. Jo-Dan will provide the Regional Director written confirmation of the date of mailing and the names of employees.

COMPLIANCE WITH NOTICE — Jo-Dan will comply with all the terms and provisions of said Notice.

BACKPAY — Within 14 days from approval of this Agreement, Jo-Dan will make whole the employee named below by payment to him of the amount opposite his name. Such payment shall be accomplished by delivery of a certified or cashier’s check(s) at the time of signing to the Regional Director of Region 4, who shall hold such check. After approval of this Agreement by the Administrative Law Judge, the Regional Director shall deliver the certified or cashier’s check(s) to the alleged discriminatee, Sean Caldwell. If the Regional Director is unable to deliver the certified or cashier’s check(s) within one year after approval of this Agreement by the Administrative Law Judge, the Regional Director shall return the certified or cashier’s check(s) to Jo-Dan. Jo-Dan will make appropriate withholdings from the backpay and front pay. No withholdings should be made from the Excess Tax and Interest payments. Jo-Dan will also file a report with the Regional Director allocating the payment(s) to the appropriate calendar year(s).

<u>Discriminatee</u>	<u>Backpay</u>	<u>Excess Tax</u>	<u>Interest</u>	<u>Front Pay</u>	<u>Total</u>
Sean Caldwell	\$26116	\$721	\$2343	\$11820	\$41000

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned cases, contained in GC Exhibit 2(m), paragraphs 1 through 14, and does not settle any other cases or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved, regardless of whether General Counsel knew of those matters or could have easily found them out. Subject to the terms of the Protective Order as applicable in light of the parties’ subsequent stipulations as to the

confidentiality designations of certain documents, General Counsel reserves the right to seek to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of these or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence. Neither this Agreement nor any conduct taken in connection with this Agreement is an admission by the Charged Parties that they are or have ever been joint employers or liable under the Act, and shall not be considered, offered, or admitted as evidence of joint employer status between McDonald's USA, LLC and any of its franchisees.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Administrative Law Judge determines that it will promote the policies of the National Labor Relations Act, the Administrative Law Judge, after providing such party an opportunity to state on the record or in writing its reasons for opposing the Agreement, may approve the Settlement Agreement. If that occurs, this Agreement shall be between the Charged Parties and the Counsel for the General Counsel. Any party aggrieved by the ruling of the Administrative Law Judge approving the Agreement may ask for leave to appeal to the Board as provided in Sections 101.9(d)(2) and 102.26 of the Board's Rules and Regulations.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTIES — Counsel for Jo-Dan authorize the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to Jo-Dan. If such authorization is granted, Counsel will be simultaneously served with courtesy copies of these documents.

Yes _____ No _____ Jo-Dan MadAlisse LTD, LLC

PERFORMANCE — Performance by the Charged Parties with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Administrative Law Judge. The Regional Director shall advise the Charged Parties of any charge alleging non-compliance with this Agreement as soon as practicable after the filing of such charge.

The Charged Parties agree that in case of non-compliance with any of the terms of this Agreement by Jo-Dan, based on alleged activities which take place within nine months after the date of the approval of this Agreement by the Administrative Law Judge, and after 14 days' notice from the Regional Director of the National Labor Relations Board to the Charged Parties of such non-compliance without remedy by Jo-Dan, the Regional Director:

1. May issue a complaint ("Merits Complaint") against Jo-Dan if the allegations contained in GC Exhibit 2(m), paragraphs 1 through 14 have been withdrawn. The Merits Complaint would include the allegations in the above-captioned cases, contained in GC Exhibit 2(m), paragraphs 1, 2(a)–2(c), 3, 4(a), 5, and 7 through 14, previously issued on December 19, 2014 in the instant case, including allegations as to the filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Such Merits Complaint shall not include allegations that McDonald's USA, LLC is a joint employer with Jo-Dan. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Merits Complaint.
2. Will promptly provide McDonald's USA LLC the approved Special Notices, in the form set forth below, and then provide 14 days to McDonald's USA, LLC to mail the approved Special Notices directly to the last known address of current employees employed by Jo-Dan. Jo-Dan agrees to provide

McDonald's USA, LLC such employees' names and last known addresses as a condition of the Agreement.

3. In the event both Jo-Dan and McDonald's USA, LLC fail to cure the breach of the Agreement, the Regional Director may amend the Merits Complaint identified in paragraph 1 of this section to include McDonald's USA, LLC as a party, and include all the allegations in the above-captioned cases, contained in GC Exhibit 2(m), paragraphs 1 through 4(a), 5, and 7 through 14, previously issued on December 19, 2014 in the instant case ("Default Complaint") as well as allegations as to the filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Default Complaint.
4. Notwithstanding any of the above, the Regional Director assigned the responsibility of investigating any alleged breach of this settlement will not allege or find a violation of this settlement based on conduct that contravenes only the broad "We Will Not do anything to prevent you from exercising the above rights" provision of the Notice to be posted by Jo-Dan.

In the event that the General Counsel files a motion for default judgment with the Board on the allegations of the Merits Complaint, the Charged Franchisee understands and agrees that all of the allegations of the Merits Complaint will be deemed admitted and that it will have withdrawn its answer to the allegations contained in GC Exhibit 2(m), paragraphs 1, 2(a)–2(c), 3, 4(a), 5, and 7 through 14, and waive its right to file an Answer to such Merits Complaint. In the event that the General Counsel files a motion for default judgment with the Board on the allegations of the Default Complaint, the Charged Parties understand and agree that all of the allegations of the Default Complaint will be deemed admitted and that they will have withdrawn their answer to the allegations contained in GC Exhibit 2(m), paragraphs 1 through 4(a), 5, and 7 through 14, and waive their right to file an Answer to such Default Complaint. The only issue that may be raised before the Board is whether the Charged Franchisee alone or both of the Charged Parties defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Merits or Default Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Parties on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order *ex parte*, after service or attempted service upon the Charged Parties at the last addresses provided to the General Counsel.

SETTLEMENT FUND — Upon execution of this Agreement, McDonald's USA, LLC shall deliver to the National Labor Relations Board ("Board") funds provided by franchisees in the amount of \$250,000, which shall be transferred by the Board into a "Settlement Fund" for the benefit of any and all potential discriminatees who may be entitled to a monetary remedy as a result of an alleged breach of the settlement in this case or any of the other cases which were consolidated as of May 2015. No party to this Agreement shall have any obligation to contribute additional funds to the Settlement Fund after the one-time contribution specified above. All parties to this Agreement and their counsel shall cooperate with the Board to execute any documents reasonably necessary to effectuate the terms of this Agreement.

In the event of:

- (1) a written notice from a Regional Director of a breach of this Settlement by virtue of a violation of Section 8(a)(3) of the Act arising from a Jo-Dan employee's discharge because of his or her union

membership or support during the nine month period following approval of the Agreement by the Administrative Law Judge and

(2) later failure or refusal by Jo-Dan to cure that breach of the Settlement Agreement, this Settlement Fund shall be used to implement McDonald's USA, LLC's support of the remedies provided under this Agreement.

Disbursement from the Settlement Fund to the alleged discriminatee(s) will be triggered when McDonald's USA, LLC notifies the Regional Director that McDonald's USA will issue the approved Special Notice, in the form set forth below, to employees to cure such a breach. Upon such notification, the alleged discriminatee may elect either:

(1) to waive reinstatement and instead receive a disbursement from the Settlement Fund in an amount equal to 500 hours of pay plus backpay for the period from the date of the violation through the date of the written notice of breach from the Regional Director, as calculated by the Regional Director or

(2) to receive a disbursement from the Settlement Fund of the pay s/he would have earned during the period from the date of the violation through the date of the written notice of breach from the Regional Director, as calculated by the Regional Director.

If the alleged discriminatee elects to waive reinstatement and receive disbursement from the Settlement Fund, such disbursement shall be in lieu of any other remedies, the relevant charge allegation(s) will be dismissed, and General Counsel will take no further action on those allegation(s). If the discriminatee elects not to waive reinstatement, the General Counsel may issue a complaint based on the alleged violation(s) of the Act, but shall not pursue default proceedings against McDonald's USA, LLC based on those violation(s).

After 15 months from the approval of the Agreement by the Administrative Law Judge and a determination from the Regional Director that there are no pending charges alleging a breach of the Agreement, the Board shall return to McDonald's USA, LLC, for distribution to the appropriate franchisee, the balance of any unused funds in the Settlement Fund. If there are pending charges after 15 months, the Board shall return the balance of any unused funds in the Settlement Fund after those pending charges are resolved.

NOTIFICATION OF COMPLIANCE — The General Counsel shall, no later than ten days after approval of this Agreement by the Administrative Law Judge, move the Administrative Law Judge for an order approving the withdrawal of the allegations of the Consolidated Complaint against the Charged Parties contained in GC Exhibit 2(m), paragraphs 1 through 14, as well as any answers, or portions of answers, filed in response to these allegations. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken with respect to those allegations of the above-captioned cases. Each party to this Agreement will notify the Regional Director in writing what steps the Charged Parties have taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement by the Administrative Law Judge.

Charged Party Jo-Dan Madalisse LLC LTD d/b/a McDonalds			Charging Party Pennsylvania Workers Organizing Committee c/o Fight for Philly	
By:	Name and Title	Date	By:	Date

Charged Party McDonald's USA, LLC		General Counsel	
By: Name and Title	Date	By: Name and Title	Date
		Approved By: Lauren Esposito, Administrative Law Judge	Date

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- ☐ Form, join, or assist a union;
- ☐ Choose a representative to bargain with us on your behalf;
- ☐ Act together with other employees for your benefit and protection;
- ☐ Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT ask you about employee support for a union.

WE WILL NOT ask you about your complaints and grievances and imply that we will fix them in order to discourage you from supporting a union.

WE WILL NOT tell you that a union cannot help you if it wins an election.

WE WILL NOT promise you benefits in order to discourage you from supporting a union.

You have the right to talk about a union, and **WE WILL NOT** stop you from talking about a union during working time while permitting talk about other nonwork topics during working time.

WE WILL NOT make it appear to you that we are watching out for your union activities.

WE WILL NOT tell you that your support for the Union is costing us money.

WE WILL NOT threaten you with pretend violence because employees support the Union.

WE WILL NOT maintain and enforce an overly broad no-solicitation rule which bans organizational activity in the restaurant.

WE WILL NOT tell Union organizers who are customers in the restaurant that they cannot speak to our off-duty employees in the restaurant.

WE WILL NOT ask off-duty employees not to sit with Union organizers who are restaurant customers.

WE WILL NOT maintain a “no loitering” rule for employees that limits restaurant visits to ten minutes.

WE WILL NOT post “no solicitation” signs in our restaurant in order to discourage you from supporting the Union.

WE WILL NOT disparately enforce our “no solicitation” policy in order to ban employees from talking with Union organizers who are restaurant customers.

WE WILL NOT fire employees because of their union membership or support.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL revise our no solicitation and no loitering rules to make it clear that employees are free to engage in organizing activities protected by Section 7 of the Act, as set forth above.

WE WILL pay Sean Caldwell, who has waived reinstatement, for the wages and other benefits he lost because we fired him.

WE WILL file with the Regional Director for Region 4 a report allocating the backpay award to the appropriate calendar years.

WE WILL remove from our files all references to the discharge of Sean Caldwell and **WE WILL** notify him in writing that this has been done and that the discharge will not be used against him in any way.

JO-DAN MADALISSE LTD, D/B/A MCDONALDS

(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

Telephone:

Hours of Operation:

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

**SPECIAL NOTICE TO EMPLOYEES
PROVIDED PURSUANT TO AGREEMENT BETWEEN THE NATIONAL LABOR RELATIONS
BOARD AND MCDONALD'S USA, LLC**

A Regional Director of the National Labor Relations Board has investigated an unfair labor practice charge alleging that [insert franchisee name] violated the National Labor Relations Act by [insert action at issue]. The Regional Director has determined that, by that conduct, [insert franchisee name] has violated the National Labor Relations Act and is not in compliance with a settlement agreement. That lack of compliance is the reason for this Notice.

McDonald's USA, LLC is party to the Settlement Agreement between the National Labor Relations Board and [insert franchisee name]. Under the terms of that Settlement Agreement, McDonald's USA, LLC is required to provide this Notice, via U.S.Mail, to support the remedies provided by that Settlement where [insert franchisee name] fails to fulfill its obligations under the Settlement Agreement.

McDonald's USA, LLC is not [insert franchisee name] and McDonald's USA, LLC's representatives did not breach the Settlement. Further, McDonald's USA, LLC's issuance of this Special Notice does not constitute an admission by it of any agency or joint employer status between McDonald's USA, LLC and any of its franchisees. Solely in its role as party to the Settlement Agreement, however, McDonald's USA, LLC disavows that [insert unlawful conduct] and advises you such action is unlawful under the National Labor Relations Act.

FEDERAL LAW GIVES YOU THE RIGHT TO:

- ☐ Form, join, or assist a union;
- ☐ Choose a representative to bargain with us on your behalf;
- ☐ Act together with other employees for your benefit and protection;
- ☐ Choose not to engage in any of these protected activities.

McDonald's USA, LLC

(Franchisor)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1- 866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866- 315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

EXHIBIT 9



Zachary Feinberg <feinberg.zack@gmail.com>

Fwd: draft informal settlement of cases involving the Philadelphia franchisee Respondent in the consolidated McDonald's litigation

Joseph A. Hirsch - Office <jahirsch@hirschfirm.com>

Wed, May 2, 2018 at 2:02 PM

To: Zachary Feinberg <zfeinberg@hirschfirm.com>

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza
3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

Begin forwarded message:

From: "Rucker, Jamie" <Jamie.Rucker@nlrb.gov>
Subject: **RE: draft informal settlement of cases involving the Philadelphia franchisee Respondent in the consolidated McDonald's litigation**
Date: March 16, 2018 at 2:30:44 PM EDT
To: "Joseph A. Hirsch - Office" <jahirsch@hirschfirm.com>
Cc: "Kobell, Deena E." <Deena.Kobell@nlrb.gov>

Mr. Hirsch:

Please bring the check for the Settlement Fund to court Monday. The checks for Mr. Caldwell should be sent to Region 4.

Yours truly,

Jamie Rucker
Counsel for the General Counsel

From: Joseph A. Hirsch - Office [<mailto:jahirsch@hirschfirm.com>]
Sent: Friday, March 16, 2018 2:20 PM
To: Rucker, Jamie <Jamie.Rucker@nlrb.gov>
Subject: Re: draft informal settlement of cases involving the Philadelphia franchisee Respondent in the consolidated McDonald's litigation

Mr. Rucker,

Shall I deliver the settlement fund check to Region 4 Regional Director, or shall I bring it to court on Monday?

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza

3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

On Mar 15, 2018, at 6:13 PM, Joseph A. Hirsch - Office
<jahirsch@hirschfirm.com> wrote:

Thanks. I sent it to the client for execution.

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza
3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

On Mar 15, 2018, at 6:10 PM, Rucker, Jamie
<Jamie.Rucker@nrlb.gov> wrote:

Counsel:

Attached is a revision of the settlement draft I sent out yesterday regarding the Region 4 cases in the consolidated McDonald's USA complaint. The only change has been to standardize references to the franchisee Respondent by the name Jo-Dan Madalisse, LTD, LLC. (On one or two occasions, "LTD" and "LLC" were transposed.)

Very truly yours,

Jamie Rucker
Counsel for the General Counsel

From: Joseph A. Hirsch - Office [<mailto:jahirsch@hirschfirm.com>]
Sent: Thursday, March 15, 2018 5:55 PM
To: Rucker, Jamie <Jamie.Rucker@nrlb.gov>
Cc: Willis Goldsmith <wgoldsmith@jonesday.com>; Ilana Yoffe <iyoffe@jonesday.com>; Micah Wissinger <mwissinger@levyratner.com>; Kathy Krieger <klkrieger@jamhoff.com>; Kobell, Deena E. <Deena.Kobell@nrlb.gov>; Ortiz, Alejandro <Alejandro.Ortiz@nrlb.gov>; Frisch, Jacob <Jacob.Frisch@nrlb.gov>; Dunham, Geoffrey <geoffrey.dunham@nrlb.gov>
Subject: Re: draft informal settlement of cases involving the Philadelphia franchisee Respondent in the consolidated McDonald's litigation

Mr. Rucker,

I have no concerns about the breakdown of backpay, interest and excess tax in the agreement you sent. Since the document you sent is a PDF I don't think I can correct the signature line on pages 4 and 7.

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza
3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

On Mar 15, 2018, at 5:40 PM, Rucker, Jamie
<Jamie.Rucker@nlrb.gov> wrote:

Dear Mr. Hirsch:

Other than (i) whatever concerns you suggested you may want to raise about the allocation of backpay to interest, excess tax, etc. and (ii) whatever corrections need to be made to the name of Respondent, the version I sent at 4:41 p.m. yesterday should be ready for execution.

Very truly yours,

Jamie Rucker
Counsel for the General Counsel

From: Joseph A. Hirsch - Office [<mailto:jahirsch@hirschfirm.com>]

Sent: Thursday, March 15, 2018 5:04 PM

To: Rucker, Jamie <Jamie.Rucker@nlrb.gov>

Cc: Willis Goldsmith <wgoldsmith@jonesday.com>; Ilana Yoffe <iyoffe@jonesday.com>; Micah Wissinger <mwissinger@levyratner.com>; Kathy Krieger <klkrieger@jamhoff.com>; Kobell, Deena E. <Deena.Kobell@nlrb.gov>; Ortiz, Alejandro <Alejandro.Ortiz@nlrb.gov>; Frisch, Jacob <Jacob.Frisch@nlrb.gov>; Dunham, Geoffrey <geoffrey.dunham@nlrb.gov>

Subject: Re: draft informal settlement of cases involving the Philadelphia franchisee Respondent in the consolidated McDonald's litigation

Mr. Rucker,

Can you confirm that this is the final agreement - ready for execution?

Joseph A. Hirsch, Esq.
Hirsch & Hirsch
Two Bala Plaza
3rd Floor, Suite 300
Bala Cynwyd, Pennsylvania 19004
tel. 610-645-9222
fax 610-645-9223
jahirsch@hirschfirm.com
www.HirschFirm.com

On Mar 14, 2018, at 4:41 PM, Rucker, Jamie
<Jamie.Rucker@nlrb.gov> wrote:

Counsel:

Please excuse me for burdening you with multiple versions of this draft settlement. Respondent franchisee counsel has brought to my attention that the last version of the settlement I sent still (i) referred to complaint paragraphs which had been withdrawn on the record, (ii) named Jo-Dan Enterprises as a Respondent, and (iii) did not account for Mr. Caldwell's anticipated waiver of reinstatement. The current version is intended to address those matters.

Very truly yours,

Jamie Rucker
Counsel for the General Counsel

From: Rucker, Jamie
Sent: Wednesday, March 14, 2018 3:53 PM
To: 'Joseph A. Hirsch - Office'
<jahirsch@hirschfirm.com>; Willis Goldsmith
<wgoldsmith@jonesday.com>; Ilana Yoffe
<iyoffe@jonesday.com>; Micah Wissinger
<mwissinger@levyratner.com>; Kathy Krieger
<klkrieger@jamhoff.com>
Cc: Kobell, Deena E. <Deena.Kobell@nlrb.gov>;
Ortiz, Alejandro <Alejandro.Ortiz@nlrb.gov>;
Frisch, Jacob <Jacob.Frisch@nlrb.gov>;
Dunham, Geoffrey
<geoffrey.dunham@nlrb.gov>
Subject: RE: draft informal settlement of cases
involving the Philadelphia franchisee Respondent
in the consolidated McDonald's litigation

Counsel:

Please substitute the attached document for the one I sent you earlier this afternoon. The characterization of the \$11820 payment to Mr. Caldwell has been changed from consequential damages to front pay, based on recently acquired information and the sentences regarding withholdings have been amended accordingly. No other changes were made.

Very truly yours,

Jamie Rucker
Counsel for the General Counsel

From: Rucker, Jamie
Sent: Wednesday, March 14, 2018 3:29 PM
To: 'Joseph A. Hirsch - Office'
<jahirsch@hirschfirm.com>; Willis Goldsmith
<wgoldsmith@jonesday.com>; Ilana Yoffe
<iyoffe@jonesday.com>; Micah Wissinger
<mwissinger@levyratner.com>; Kathy Krieger
<klkrieger@jamhoff.com>
Cc: Kobell, Deena E. <Deena.Kobell@nlrb.gov>;
Ortiz, Alejandro <Alejandro.Ortiz@nlrb.gov>;
Frisch, Jacob <Jacob.Frisch@nlrb.gov>;
Dunham, Geoffrey
<geoffrey.dunham@nlrb.gov>
Subject: draft informal settlement of cases
involving the Philadelphia franchisee Respondent
in the consolidated McDonald's litigation

Counsel:

Attached please find a proposed settlement agreement in the above-referenced matter. Please advise me of your position vis-à-vis this draft agreement.

Very truly yours,

Jamie Rucker
Counsel for the General Counsel
<SET.04-CA-125567.JoDan.3137.
Broad.ISA.14.March.2018.pdf>

<SET.04-CA-125567.JoDan.3137.Broad.ISA.14.March.2018.pdf>